S. HRG. 100-563

CONSTRUCTION OF A BUILDING FOR THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES, TRANSPORTATION, AND
INFRASTRUCTURE

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

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CONSTRUCTION OF A BUILDING FOR THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS

WEDNESDAY, FEBRUARY 3, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION,
AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 406, Dirksen Senate Office Building, Hon. Daniel P. Moynihan (chairman of the subcommittee) presiding.

Present: Senators Moynihan, Durenberger, Stafford, and Pressler.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. I would like to say good afternoon to our guests and, of course, our most distinguished guest, the Honorable Warren Burger, former Chief Justice of the Supreme Court.

This is a meeting of the Subcommittee on Water Resources, Transportation, and Infrastructure. We are here to consider the legislation introduced late last year, S. 1934, that provides a building for the Administrative Office of the United States Courts here in the Capitol Hill region as we know.

I have a statement I would like to place in the record, and I would like to set the framework for our hearing this morning. I would want to welcome and to hear Mr. Ralph Mecham, who is the director of the Administrative Office; and our very dear friend and most distinguished architect and planner, the Honorable George White who is Architect of the Capitol; Mrs. Libby Rowe of The Committee of 100 on the Federal City; and David Sellin of The Planning Commission.

Our procedures here are very simple. For some time now—I believe as the Chief Justice will testify for many years, it goes back almost 20—there has been need for an office that would provide for the administrative functions of the Court. There are some 600 persons now employed, and there are five different locations. It's a caricature. It is a situation not different from that of the Executive Branch generally, but it's inappropriate and unnecessary for the Judicial Branch.

In the 99th Congress we enacted a bill that asked the Architect of the Capitol to come forward with a plan and a proposal that would deal with this situation, and that plan and proposal was to

be reported to the Congress. We have received the report, we have been most impressed with it, and we know that the bill we are discussing will, in effect, put that matter forward as law and will now proceed to build the building, let's put it that way. The question is exactly what kind of building, and so forth; we'll get into that at this hearing.

I would like to make one point: that it appears to me that the Congress and the Executive Branch in their relations among the branches of Government never faced a more compelling constitutional mandate than to be mindful of the purposes and needs of the Judiciary Branch. We do that for the simple reason that the Judicial Branch is dependent on us in these matters and does not have the capacity to retaliate, and so forth, as the Executive can do with the Legislative and vice versa.

The requests made of us over the centuries have been modest in the extreme. It was not until 1904 that President Roosevelt built the west wing of the White House, and we promptly built the Russell Building and the House built the Cannon Building. It took a quarter century before the Court asked for a building of its own; and it was not until 1936, I believe, that you actually entered across the way.

We haven't seen enough of you since, sir; but that's not my point. And now you've asked for this second building. Well, I think a while ago you asked for a parking lot—we got you the parking lot—and we want to get you this building. I don't want to say another word except to say that I do want to announce that I met this morning with the representative of the Office of Management and Budget, and they approve the manner in which we mean to proceed with the lease-to-own arrangement. This the OMB approves, and I am free to so state.

This legislation is introduced by our distinguished chairman emeritus, Senator Stafford of Vermont, our Chairman, Mr. Burdick, who visited with the Chief Justice for a moment and had to leave to attend a 2:00 o'clock meeting.

I must, at this point, put an end to this monologue in order to hear from our distinguished chairman emeritus, Senator Stafford.

[Senator Moynihan's written statement follows:]

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Good afternoon. It is my pleasure to be here this afternoon as the Subcommittee on Water Resources, Transportation, and Infrastructure conducts a hearing on a proposal to construct a building on the Capitol grounds for the use of the Federal Judiciary. I am honored to greet as our first witness the honorable Warren E. Burger, former Chief Justice of the United States Supreme Court. I also welcome Mr. Ralph Mecham, Director of the Administrative Office of the United States Courts, and the honorable George M. White, the Architect of the Capitol. We will also hear from representatives of two local citizens groups this afternoon; Dr. David Sellin of the Citizens Planning Commission and Mrs. Elizabeth Rowe of the Committee of 100 on the Federal City.

In 1985 legislation from this Committee was enacted which directed the Architect of the Capitol and the Secretary of Transportation to undertake a comprehensive study of the needs of the Judiciary and the best way to meet those needs. The result was a joint report that was recently transmitted to Congress.

Currently about 800 employees in the Administrative Office of the U.S. Courts, the Federal Judicial Center, and other judicial branch support offices are located in seven different buildings scattered throughout the D.C. metropolitan area. The ar-

rangement is inefficient and expensive. There is a need for a new Building to consolidate these agencies and to provide expansion space for offices of retired justices and other needs of the Supreme Court. The proposed site, adjacent to Union Station and on Capitol grounds, was designated for this purpose in the 1981 Master Plan for the Capitol.

An appropriation of $75 to $115 million would be necessary to construct a building of suitable size using conventional methods of financing. Instead, the report recommends a lease-to-own plan, whereby the Federal Government will own the building built by a private developer after a thirty-year lease period. Under this plan, the lease payments made over the thirty years will pay for the construction costs of the building.

Competitors in the design competition worked within guidelines specified by the Architect. The Congress and the Architect are well aware that this building must complement the majestic Union Station and the city post office building, both designed by Daniel Burnham.

Recently concerns have been raised about the height of the proposed building and whether its construction will contribute to traffic problems on the Hill. I and my colleagues are eager to hear from historic preservation groups and local citizens in regard to this proposal. Before this legislation is acted upon by the Environment and Public Works Committee, every effort will be made to address these valid concerns.

Senator STAFFORD. Chairman Moynihan, it is always a pleasure to be here with you and I recognize the distinct pleasure to meet some of the distinguished people in the audience. I'm not going to trespass on their time by making an opening statement, I'm here to learn from what they wish to say today.

Senator MOYNIHAN. Thank you, sir.

We have a statement from Senator Reid which will be placed in the record at this point.

[Senator Reid's statement follows:]

OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, it is a pleasure to be here today as the Subcommittee on Water Resources, Transportation and Infrastructure conducts this hearing on S. 1934, a bill to provide administrative office space for the U.S. Courts and the Supreme Court. I would like to compliment Senator Moynihan, Senator Burdick and Senator Stafford for their efforts to provide the judicial branch with a desperately needed office building. Currently, judicial branch employees are scattered around in seven different buildings, and their allotted space is insufficient to meet their needs. I am proud to support these efforts to remedy the problem.

I understand some controversy has arisen over the proposed height of the building, and I am interested in hearing the discussion of this issue. I sincerely hope that this issue can be resolved agreeably.

I think it is fitting that on this day when we have voted to fill a vacancy on the Supreme Court, that we should now turn toward the issue of providing the judiciary with adequate office space.

I would like to join my colleagues in welcoming former Chief Justice Warren Burger. Mr. Chief Justice, it is indeed an honor to have you here today. I look forward to your testimony and the testimony of our other distinguished witnesses.

Thank you.

Senator MOYNIHAN. Mr. Chief Justice, again we welcome you. It is a great pleasure and distinction this committee can but rarely have had in its history and would you proceed as you wish, sir.

STATEMENT OF HON. WARREN E. BURGER, FORMER CHIEF JUSTICE, U.S. SUPREME COURT

Chief Justice BURGER. Thank you, Mr. Chairman, for letting me be here; and I won't detain you long.

As I was sitting here and visiting briefly before the hearing opened, including a visit with George White, the Architect of the

Capitol, I realized that this hearing, in a sense, takes note of one of my principal failures during my tenure of office. I probably had a good many failures but one of the principal ones was one that I wanted to get done in the first year I came into office in 1969 was to secure a judiciary building. At that time, Mr. White's predecessor was in office, and I had a few brief visits with him pointing out that the Administrative Office of the Courts was then sitting in five or six different buildings as the committee is aware and that we were paying out a good deal of rent for all that. I was occupied with a great many new problems during 1969 and 1970, but when George White came on we began discussing this project very seriously.

Obviously, to get an appropriation of $50 or $60 million from Congress to build a building that would be entirely a public building on public land was not easy. I think it's fair to say that Georg White earmarked a particular piece of land, the land now in consideration down near the Union depot, for this purpose; and its location is ideal because of its proximity to the Court itself, because there is a great deal that goes on between the Office of the Chief Justice and now my successor's office, and the Administrative Office of the Courts and the Federal Judicial Center. We obviously didn't make much progress or we wouldn't have to be here today. I simply want to emphasize that this need is very, very great.

At that time that I spoke of, in 1969 coming into office, we were just moving into the Federal Judicial Center Building in early 1970—that's the Dolley Madison house and the adjoining buildings which are public buildings. It is very logical to put all of these units together. Over the years, even the space for committees of the Judicial Conference to meet was so limited that frequently we would have committees of the Conference meeting at the Supreme Court dining room or in the law clerks' dining room, whatever space was available. The greatest factor on efficiency is to have the Administrative Office and the others occupying nearly—I think it's nine or ten buildings—eight or nine at the present time. It's always easy to look back, our hindsight is the best kind we have. We can see now that if we had built that building in 1970 or 1971, the rent would have amortized the cost of that building.

So I would very strongly urge that this is a great need and now the new proposal is to have a joint private sector arrangement, the details of which Mr. Mecham and Mr. White will undoubtedly explain to the Committee. But I simply emphasize that this is very important, very much needed, and will improve the overall efficiency of the administration of the Courts in the long run.

That's all I have, Senator, unless you have some cross-examination.

Senator MOYNIHAN. Well, I do have just very few, sir. And that is to say, I heard you correctly that this will be a facility that will provide for meeting places for the administrative conference, which is Federal judges. I believe Judge Bryant just reported to me with great pleasure from New York that he is going to be appointed so we have to think in the designs—I'm sure Mr. White is doing—of its quasi-judicial purposes and as well, on occasion, its ceremonial purposes. This is not just to be an office facility, this is a place where Federal judges meet who make the kinds of decisions that

you make about the courts, and it has to be appropriately provided in that regard--better than the clerks' lunchroom over on your side, we'll see. That is right.

Chief Justice BURGER. Yes, that is correct. There is another factor when the visiting judges at the Court of Appeals or the District Court in Washington, other Federal judges assigned to sit here because of the heavy load of this Court, up to now there has always been a problem on chamber space for the visiting judges because the space is so limited. Now, there will be some space at least available for them in this new building, I understand——

Senator MOYNIHAN. Right, and I see Mr. White nodding that you've been thinking. Well, we are building a—what in many functions is a courthouse as well as an Administrative Office and we should think in those terms and we shall do. We most certainly shall do.

I might say to you, sir, that this last time around we have reached agreement, in statute, with OMB to go forward with building a new Federal courthouse at Foley Square in New York City where you have a building that was constructed for 16 judges and now houses 60. And that's only in a half century span. We could not ask more succinct or more persuasive testimony. We want to assure you that we are here today to carry out your wishes, and they are very sparingly expressed to us.

Mr. Chairman.

Senator STAFFORD. Thank you very much, sir. I have no questions for the Chief Justice. We have talked about this project in past years when I did have the privilege of serving as chairman of the committee. I'd be delighted if, now under your leadership, Senator Moynihan, we can go ahead and get the job done.

Senator MOYNIHAN. Let's do that.

Senator STAFFORD. Thank you very much.

Chief Justice BURGER. I would be very grateful and happy if the Congress finally remedies one of my biggest failures not to get this thing done sooner——

Senator MOYNIHAN. All right, sir, that's an obligation.

Chief Justice BURGER. Thank you, sir.

Senator STAFFORD. Thank you, Senator.

We are now going to hear from the person who is going to want to do that, the Honorable George White, who is the Architect of the Capitol. Before he testifies, I want to say that it's past time that this Committee and this Congress recorded its gratitude to Mr. White and his colleagues for the extraordinary work they have done on the West Front. Four years ago—three years ago—at the Inauguration, there were those of us who feared that if those cannons went off with too great regularity, the dome might come down and the Chief Justice and the President-elect and the President himself would be gone in one great cloud of dust, and I even went so far as propose the Vice President be kept over in the Library of Congress in case anything untoward took place. But this year the wall's all been fixed, the effects of the British burning the Capitol has been redone; and we can resume normal relations with Great Britain and all manner of wonders followed from your genius. I mean, if just plain—whereas we had to lose the old East Front in order to shore it up. You did it on your own, you did it on time,

under budget and with just—the public never says thanks very well, sir, but this Committee says thanks to you.

STATEMENT OF HON. GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

Mr. WHITE. Thank you very much, Mr. Chairman. I usually say I need all the kind words I can get whenever the time arises so I appreciate that very much. I've prepared a brief statement, Mr. Chairman.

Senator MOYNIHAN. We'll put that in the record and proceed exactly as you wish.

Mr. WHITE. Thank you. I probably should say that the report itself—the substantive portion of the report—is only 16 pages long and, in effect, that's the testimony. I have a statement in addition to that, and I would like to expand on that a little bit. I think it would be useful to state our conclusions first and describe the process very briefly. We recommend that a public/private arrangement be authorized whereby the building would be constructed by a private developer with the Federal Government as a major tenant. Title to the land which is a part of the Capitol Grounds would remain in the Government with the building reverting to Federal ownership in 30 years or less depending upon the arrangements we finally work out. No additional appropriated funds would be required. The rental rates for the federally occupied portion of the building would be substantially below market rates. In effect, the value of the land that the Government furnishes is the basis for a free building and bargain rental rates.

The proposals from five developer-architect teams are negotiable but have a shelf life because of changing financial circumstances. It is, therefore, urgent that some action be taken in the relatively near future in order to take full advantage of the proposals. As recently as Monday, Mr. Chairman, we checked with the proposers in order to be certain that the numbers that are proposed are currently valid, and we find that they are. They were submitted almost a year ago, and we thought it useful to be certain at this time so I can report that to you.

As you know, Mr. Chairman, this report that was submitted was prepared in response to legislation enacted in Public Law 99-229 that grew out of the interest of the Congress in finding a more economic solution to providing for the needs of the Administrative Offices than had been proposed by GSA. The wisdom and perception of the Congress is evidenced by the major benefits that the recommendation will achieve. The report follows the requirements of the law and examines the various alternatives provided therein.

Mr. Chairman, because this is one of the most important monumental areas of our Capitol and has received a great deal of study and attention in our master plan which was submitted in 1981, a major consideration in our efforts was to be certain that the architecture of the building and its urban design characteristics would be the finest that could be achieved. The economic considerations are, of course, of great importance as well. Therefore, we felt it incumbent upon us to achieve a reasonable balance so that neither

the architectural nor the economic considerations alone controlled the process.

We engaged two firms to assist us in this endeavor, an architectural firm named 3D International and an economic counseling firm named GA/Partners. In my judgment, these are two of the finest firms in their respective fields and both have extensive experience in the office building field. Because of the need to place reasonable but firm constraints on the architecture and thus to enable an architectural competition to be held which would result in a design that would be appropriate for this unique site, we and our consultants engaged in an intensive study effort to achieve that end. In order to retain the flexibility needed to minimize costs and maximize economic benefits, it was decided to conduct the competition through developer-architect teams.

As you know from the report, the teams that were selected on the basis of pre-established criteria are among the finest in the Nation.

Senator MOYNIHAN. I'm going to feel free to interrupt.

Mr. WHITE. Please. Yes, of course.

Senator MOYNIHAN. The audience will want to know this if you don't have available copies. His teams are Boston Properties with Edward Larrabee Barnes, Oliver Carr Company with Kohn Pederson, Fox, Gerald D. Hines interest with Kevin Roche, Quadrangle Development Corporation with I.M. Pei and Partners and Trammell Crowe with Skidmore Owings and Merrill. I hope the Chief Justice who is still able to be present at the moment would recognize that Mr. White has been faithful to his assignment. There would not be a more distinguished list.

Mr. WHITE. Thank you, Mr. Chairman. The results, as I say here, are an echo of what you just said. The results of this competition have met, if not exceeded, all of our expectations. We are therefore confident that the congressional approval of our proceeding further will enable all of the goals to be reached for this project.

I want to interrupt this prepared statement to digress for a moment, Mr. Chairman, because I understand there has been some concern voiced and some testimony that will be given shortly regarding building heights.

Senator MOYNIHAN. Yes.

Mr. WHITE. And it relates, of course, to the whole question of urban design in this area about which we spent a tremendous amount of effort and other architects and designers have as well.

Let me say first that we are in support of concerns about building height. It's important that the height of buildings in this monumental area and in other areas of the city as well be carefully controlled. I am pleased that others are concerned as well because this is a monumental area. I should say that some evidence is probably going to be presented with regard to the 1910 Heights of Buildings Act. That act does not apply to the Capitol grounds, and I have a memorandum of law which I would like to submit for the record indicating that.

Senator STAFFORD. Could I ask the counsel involved. Perhaps you could bring it forward.

Mr. WHITE. Could this be made part of the record?

Senator MOYNIHAN. Yes, indeed.

Senator STAFFORD. Thank you.

[The material referred to follows:]

APPENDIX G

SCHEDULE OF HEIGHTS OF BUILDINGS ADJACENT TO PUBLIC BUILDINGS. AS ADOPTED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA, IN CONFORMITY WITH THE ACT OF CONGRESS OF JUNE 1, 1910, AND THE AMENDMENTS OF DECEMBER 30, 1910, AND MAY 20, 1912.

1. On G Street NW., between Seventh and Ninth Streets, adjacent to the Civil Service Commission Building, no building shall be erected or altered so as to be higher than the horizontal line 90 feet above the top of the curb, at the northwest corner of Eighth and G Streets NW. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

2. On F Street NW., between Seventh and Ninth Streets, adjacent to the United States Patent Office, no building shall be erected or altered so as to be higher than the horizontal line 90 feet above the top of the curb at the southwest corner of Eighth and F Streets NW. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

3. On Fifteenth Street NW., between Pennsylvania Avenue and G Street, adjacent to the Treasury Building, the cornice line or parapet wall of any building shall not extend above a horizontal line 80 feet above the top of the curb, at the southeast corner of Fifteenth and G Streets NW., and no part of the roof of any building shall be higher than a horizontal line 95 feet above the top of said curb, excepting ventilation and elevator shafts, which shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

4. On Seventeenth Street NW., between New York Avenue and G Street, confronting the State Department Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northwest corner of Pennsylvania Avenue and Jackson Place, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of said building a distance equal to the height of such shafts above the adjacent roof.

5. On Pennsylvania Avenue NW., in squares 167 and 221, confronting the Treasury Building and the State Department Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northeast corner of Pennsylvania Avenue and Madison Place for buildings to be erected or altered in square 221, and the curb at the northwest corner of Pennsylvania Avenue and Jackson Place for buildings to be erected or altered in square 167, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of such building a distance equal to the height of such shafts above the adjacent roof.

6. On North Capitol Street, in square 625, confronting the City Post Office Building, no building shall be erected or altered to be higher than a horizontal line 90 feet above the top of the curb at the northwest corner of North Capitol Street and Massachusetts Avenue, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of said building a distance equal to the height of such shafts above the adjacent roof.

7. On the north side of Maryland Avenue NE., between First and Second Streets, adjacent to the Supreme Court Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northeast corner of the intersection of First Street and Maryland Avenue NE. Ventilation and elevator shafts shall be set back from the front and side lines of the building at a distance equal to the height of such shafts above the adjacent roof.

8. On the east side of Second Street NE, between East Capitol and B Streets, adjacent to the Supreme Court Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northeast corner of the intersection of Second and A Streets NE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

9. On the east side of Third Street SE., between East Capitol Street and Pennsylvania Avenue, adjacent to the new Library of Congress Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of Third and A Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

10. On the south side of Pennsylvania Avenue SE., between Second and Third Streets, adjacent to the Library of Congress Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of the intersection of Second Street and Pennsylvania Avenue SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

11. On the south side of B Street SE., between First and Second Streets, adjacent to the Library of Congress, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of First and B Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

12. On the east side of First Street SE., between B and C Streets, adjacent to the House Office Buildng, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of First and B Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

(7-1-69)

13. On the south side of C Street SE, between First and South Capitol Streets SE., and between South Capitol Street and Delaware Avenue SW., adjacent to the House Office Building and Annex, no building shall be erected or altered so as to be higher than a horizontal line 90 feet above the top of the curb at the southeast corner of South Capitol and C Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

14. On Fourteenth Street SW., between D and Water Streets, confronting the Bureau of Printing and Engraving, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the southeast corner of Fourteenth and D Streets SW., excepting ventilation and elevator shafts, which shall be set back from the front and side lines of such buildings a distance equal to the height of such shafts above the adjacent roof.

15. On the north side of C Street, NE., between First and Second Streets adjacent to the Senate Office Building Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of First and C Streets, NE. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

Appendix H

CHANCERY ACT

(Act of October 13, 1964, 73 Stat. 1091)

To regulate the location of chanceries and other business offices of foreign governments in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Act entitled "An Act providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and the uses of land in the District of Columbia, and for other purposes", approved June 20, 1938, as amended (D.C. Code, sec. 5—418), is amended by inserting "(a)" after "Sec. 6." and by adding at the end of such section the following new subsections:

"(b) After the date of enactment of this subsection a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building anywhere in the District of Columbia, other than a district or zone restricted in accordance with this Act to use for industrial purposes, for use by such government as an embassy.

"(c) After the date of enactment of this subsection, except as otherwise provided in subsection (d) of this section, no foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery where official business of such government is to be conducted on any land, regardless of the date such land was acquired, within any district or zone restricted in accordance with this Act to use for residential purposes.

"(d) After the date of enactment of this subsection a foreign government shall be permitted to construct, alter, repair, convert, or occupy a building for use as a chancery within any district or zone restricted in accordance with this Act to use for medium-high density apartments or high density apartments if the Board of Zoning Adjustment shall determine after a public hearing that the proposed use and the building in which the use is to be conducted are compatible with the present and proposed development of the neighborhood. In determining compatibility the Board of Zoning Adjustment must find that—

"(1) in districts or zones restricted in accordance with this Act to use for medium-high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each twelve hundred square feet of gross floor area; and

"(2) in districts or zones restricted in accordance with this Act to use for high density apartments, that off-street parking spaces will be provided at a ratio of not less than one such space for each one thousand eight hundred square feet of gross floor area; and

"(3) the height of the building does not exceed the maximum permitted in the district or zone in which it is located; and

"(4) the architectural design and the arrangement of all structures and off-street parking spaces are in keeping with the character of the neighborhood.

"(e) As used in this section, the term—

"(1) 'embassy' means a building used as the official residence of the chief of a diplomatic mission of a foreign government.

"(2) 'chancery' means a building containing business offices of the chief of a diplomatic mission of a foreign government where official business of such government is conducted, and such term shall include any chancery annex, and the business offices of attachés of a foreign government who are under the personal direction and superintendence of the chief of mission of such government. Such term shall not include business offices of non-diplomatic missions of foreign governments such as purchasing, financial, educational, or other missions of comparable diplomatic nature.

August 27, 1987

MEMORANDUM TO: Mr. White

FROM: Mr. Salyer

SUBJECT: Application of the 1910 Height Limitations Act to Capitol Grounds

This is in response to your request of yesterday that I research the applicability of the 1910 Height Limitations Act to Capitol Grounds.[1]

The question of whether the Building Height Limitation Act of 1910 applies to Capitol Grounds is governed by the seminal principle announced by the Court in McCulloch v. Maryland, 4 Wheat. 316 (1819), that:

> "[i]t is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their influence." Id., at 427.

See also the opinion of Mr. Justice Holmes in Johnson v. Maryland, 254, U.S. 51, 57 (1920).

As recently as in Hancock v. Train, 426 U.S. 167 (1975), the Court relied on these principles in holding once again that statutes which have general application are not applied to the sovereign[2] absent a clear unequivocal expression of that intent.[3] This immunity means that where Congress has not affirmatively declared its instrumentalities or property to be subject to regulation, the federal function is free of regulation.[4]

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[1] Act of June 1, 1910, 36 Stat. 452, Ch. 263. §3; §5-403, et seq., District of Columbia Code, 1981 ed.

[2] United States v. United Mine Workers, 330 U.S. 258, 272 (1947); United States v. Herron, 20 Wall. 251, 263 (1874); United States v. Knight, 14 Pet. 301, 315 (1840).

[3] United States v. Wittek, 337 U.S. 346, 359 (1949).

[4] Mayo v. United States, 319 U.S. 441, 445 (1943).

From the beginning, with President Washington's proclamation of October 17, 1791,[5] establishing the first building regulations, including a height limitation, there was no indication that this sort of regulatory scheme was intended to apply to the grounds of the United States Capitol.

In enactment of the 1910 Act, as well as the preceding 1898 Act, it is clear from the legislative history that the Congress intended to take action to bring building laws in the City of Washington into line with other major cities that had already adopted height limitations.[6]

The method imposed by the Congress to control height and growth was a building permit system, a requirement that the Congress never applied to itself. The reports and commentary surrounding the adoption of the 1910 Act speak only of private building activity. Nowhere in the available legislative history of this enactment have I found any indication that Congress intended to apply these limitations to Capitol Grounds.[7] In this regard, it is worth noting that it was the Commissioners of the District of Columbia who submitted the draft bill to regulate heights that eventually became the 1910 Act.[8] Surely the Board of Commissions, circa 1910, did not have the temerity to suggest that Congress should adopt a law limiting the height of buildings' on Capitol Grounds.

Again, as is clear from the previous discussion, the point to be made is that, unless Congress states its intent in clear, unequivocal terms, an effort to bind the United States to the terms of any particular enactment cannot succeed. In Hancock v. Train, supra, the issue was much less clear than here. There the issue was whether federal facilities were subject to various state permitting systems for purposes of meeting emission standards and limitations under §118 of the Clean Air Act Amendments of 1970.[9] In that Act, federal facilities were required to meet the substantive standards for pollution reduction, but the Act was silent with respect to the application of the procedural standards established

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[5] The Acts of Congress in relation to the District of Columbia: 1790 - 1831. Washington. William A. Davis, 1831, pp 71 - 72

[6] See Report No. 1704, 55th Cong. 3d Sess.

[7] See "Committee on the District of Columbia Staff Report on Building Heights Limitations", April 1, 1976, pgs. 27 - 157.

[8] See Report No. 720, 61st Cong. 2d. Sess.

[9] Clean Air Act, as amended, 42 U.S.C. §1857 et seq.

by the state and approved by the Administrator of EPA to federal facilities. So even where the legislation required a certain level of performance by federal facilities under the various state implementation plans, the Court refused to find that federal facilities were required to conform to a general performance schedule set forth in the law absent a specific legislative directive to that effect.

With respect to the immediate area of concern, the language in the 1910 Act pertaining to buildings that will front or abut on the plaza of the Union Station makes no reference to federal facilities or Capitol Grounds and is found in the midst of a legislative enactment of general application. It is fundamentally unsound to conclude that Congress would adopt a height requirement with respect to buildings on Capitol Grounds that would be administered by the District of Columbia. Accordingly, there is no reason to conclude that this provision was intended to apply to Capitol Grounds. Under this reasoning it follows that any property that became a part of Capitol Grounds after adoption of the 1910 Act would not be subject to its terms unless by specific enactment to that effect. Congress had only to make its intentions known.

In view of the foregoing I must conclude that Congress made no sign that it intended the 1910 Height Limitations Act to apply to Capitol Grounds. Please advise if I can be of further assistance.

JCS

cc: BCW

Mr. WHITE. But what is more important, Mr. Chairman, is not whether it applies or not but whether what it intends to do is accomplished. In our judgment, the question is really a non-issue since the height that we propose that this building be is less than would be permitted under the 1910 Act as it is applied in the District of Columbia.

In that regard—just to refresh your recollection, Mr. Chairman—you may recall that, by law, I sit on the District of Columbia Zoning Commission. On January 28 just passed, I began my 18th year on that Commission and so I have a modicum of experience with regard to the application of local D.C. law in that regard. And if this were on private property at this same location, if this were not Capitol grounds, and if it were to be built by a private developer with the limit of the 1910 Act applying, an 80-foot building could be built on this site. The District of Columbia permits a penthouse as does the 1910 Height Act to take care of elevator overruns and now mechanical equipment and other things. The District of Columbia law, which conforms to, but is stricter than, the 1910 Building Height Act, permits an extension above the Building Height Act limit or any height limit within the District of Columbia provided otherwise, and there are those, of 18 feet 6 inches above the height limit to take care of the needs of mechanical equipment, etc. The 1910 Heights of Buildings Act permits an unlimited height above "any limit prescribed in this Act" for the same and other purposes. The setback from the face of the building required under the 1910 Act is a 1:1 ratio, that is to say, you must be back a minimum of 18.5 feet from the face of the building if you're going up 18.5 feet in height. In our case that gives you a total permitted height under the 1910 Act of 98.5 feet. The height limit which we have proposed is 94 feet which is 4.5 feet below that which could be constructed if this were private property under the 1910 Height Act if the District of Columbia limit of 18.5 feet were applied.

Now in addition, Mr. Chairman, we are back from the face of the building 30 feet with our 94 foot height limit, not the 18.5 that would be permitted under the Act. Furthermore, our first cornice line or our first step back line is at 60 feet. We stepped back 10 feet horizontally at the 60 foot height and then rise up to 70 feet. Then we go back another 20 feet before permitting a rise up to 94 feet. This was the envelope that was given, and it's submitted to you in the report, in the design guidelines which the architects were required to follow. We did not limit the designers to the 94 feet for the purposes of the submissions. We permitted an 18.5 foot rise above that for the penthouse if they so chose. Interestingly enough the five architects that you named, all expressed their sensitivity to the urban design needs of the principal element in this group of three buildings; namely; the Union Station, City Post Office on one side, and this proposed building on the other side; the other two are landmark buildings. The sensitivity was needed to create an urban design scene that would not diminish the focal point of the Union Station. Only one of the five chose to go above the 94 foot point and even that one—these are schematic diagrams—was amenable to reducing to the 94 foot line, which is, incidentally, the main cornice line of Union Station and that's why it was picked. It is the cornice line at the base of the vaulted dome on the exterior

of Union Station, so this was not an arbitrary number that came out of the air. It related to Union Station. And it turns out, as I say, it's 4.5 feet below that which could be built by the private sector if this were private land and if the 1910 Act were to apply.

So we are in full support of limiting heights in this area, and we've done so voluntarily even though the 1910 Act doesn't apply. I want to mention that, Mr. Chairman.

Senator STAFFORD. Mr. White, do you have any models of the building we are discussing?

Mr. WHITE. We do, Senator. We did not bring them along and, as we say in the report, because of the negotiation process in which we intend to engage, provided the legislation will tell us to proceed, in order to protect the Government's interest, we didn't expose any of that. We suggest if you would like to see those that it be done in Executive Session but I would call to your attention that in the design guidelines pamphlet, which is part of the report, we made some of our own models in order to establish these limits. And you will find some physical examples given there. They are not the submitted ones by the competitors, but they do give you the same feeling.

Under the design guidelines which in your report is under Attachment A-2, you'll find a design guidelines pamphlet which has been modified to fit in that book; and then towards the end of it on pages J and K, you see the height of the envelope related to the cornice line at the base of the vaulted dome of the barrel vault on the Union Station.

Senator MOYNIHAN. That's 94 feet, that cornice. And then the vault goes up to what, sir?

Mr. WHITE. The vault goes up to 123 feet.

Senator MOYNIHAN. To 123 feet?

Mr. WHITE. Yes.

Senator MOYNIHAN. So your penthouse—to use that phrase—is 29 feet below the pole.

Mr. WHITE. That's correct.

Senator MOYNIHAN. But right at the——

Mr. WHITE. That's correct. And you can see if you now go several pages back to page O and P which is on the back of O, you will find a plan and a photograph of a model showing a building constructed to that 94 height limit and you will find the same thing on Q and R. These were our own models just to show that solutions were possible after we set these constraints. You will find Q shows another plan, and then on R you will see a model again to the 94 foot height limit. And you see an elevation on both of those pages showing the relative heights. The same thing is true of S and T. Now T shows it going up to the 94 foot height limit. I think the previous one is lower than that. We made different models.

Senator MOYNIHAN. Right. May I just say that this is a considerable undertaking.

Mr. WHITE. YES.

Senator MOYNIHAN. We have a distance just about the size of the Post Office.

Mr. WHITE. That's correct. It's not the same in volume or area as the Post Office; but from the street level to the observer, it is an extremely important design element. It will appear as though it's

the same volume as the Post Office at least on the facade. You can't see how far back it goes.

The other consideration, Mr. Chairman, on earlier pages, back on pages B, C, and D you will find the exploration of the question of setback lines determined as a means of trying to create an urban scene that would not overwhelm that square. It's a very beautiful square and the effort was made to have the setback line such that we didn't penetrate into that open plaza area.

Senator MOYNIHAN. Yes, I see your point.

Mr. WHITE. You see, Delaware Avenue forms the center of the site line from the center of Union Station to the Capitol.

Senator MOYNIHAN. Right.

Mr. WHITE. A perpendicular to that is not parallel with Massachusetts Avenue, so we have the problem of not letting the building come up to Massachusetts Avenue on the east side as the Post Office does on the west side because it would penetrate too far into that open space. So we struggled a long time with how best to achieve that, and you see it's explained, I think, in the design guidelines. But you see the struggle that took place there as to the appropriate method of determining——

Senator MOYNIHAN. Right. That's a very sensitive point you've made. Would I be right to say that if you had stayed on the Post Office setback line, it would be coming up much too close to the Capitol?

Mr. WHITE. Yes, and furthermore, the facades of the three buildings would be disturbed in relationship to one another; you have the Post Office, which is not exactly on the same line with Union Station, as you see, but has a slight projection at its easterly end but drops back because of Massachusetts Avenue. If you did the same thing on the other side, you would have a major projection forward; and, of course, Burnham did both of those buildings and so he related them to one another. The point we show in the design guidelines that the spot at the juncture of those two—you see on page H—that the point is indicated as an area of maximum design concern. You see, because, something needs to be done there to relate these three buildings without visually pushing Union Station back so far from the face of this building that it becomes an adjunct to it rather than the primary focus.

So I indicate this, Mr. Chairman, only to show that we spent a great deal of time and effort concerning ourselves with all aspects of this extremely important area including height; and I might say also that we projected the watchword that we had adopted when we did the Master Plan which was at the very least, "Let's not spoil what is already there" rather than trying to make a statement of our own. And we've done that, both in the Master Plan in order to take this great MacMillan Plan and preserve and enhance it rather than make our own statement because we are here. And we approached this whole problem that way.

Senator MOYNIHAN. Our guests might want to know that in the original plan, the Pennsylvania Railroad planned to build its terminal right at the foot of Capitol Hill where the Reflecting Pool is right now. Mr. Cassatt was the Railroad president and father of Mary Cassatt, as a matter of fact. And, if I'm correct, he was persuaded to move over from the foot of Capitol Hill over to the other

side; and if I'm not mistaken, he had a small condition which was that we build a post office next to his railroad. He was not for nothing president of Pennsylvania Railroad.

Mr. WHITE. That was the key, Mr. Chairman. That was the key, incidentally, to the present mall. The whole MacMillan Plan was based on getting that railroad station removed from there; and as you know, as a result, there is a tunnel under First Street for all of the passenger trains going south. That tunnel runs right next to this building in order to enable those trains to traverse the mall without being exposed on the surface.

Senator MOYNIHAN. And it is also the case that the post office and railroad station are not just there; they are there because we put them over there from here. It became part of the Capitol precinct at that moment. It was built in perfect radius from the Capitol. And yet, somehow, the area hasn't prospered. Nothing's happened there since.

Mr. WHITE. Well, it's beginning to happen there now.

Senator MOYNIHAN. I made the observation to Mr. Rizzo this morning, that it took—you would know much better than I—40 years for Rockefeller Center to cross Sixth Avenue. Sometimes these things just take time. I think it's important that we know that we're not just putting up a good office building; we're continuing the design of the Capitol grounds.

Mr. WHITE. Exactly.

Senator MOYNIHAN. And this building is on the Capitol grounds just as is the Supreme Court building.

Mr. WHITE. And, Mr. Chairman, I mention the importance of all of these things and our sensitivity to it because the building height issue—and that's why I said what I did in support of the people who will concern themselves with it later. We are extremely supportive of minimizing building height. And we think we've done that here and so have the architects who have submitted the proposals. Mr. Chairman, I have one or two other things, if I may. I would like to comment on the fact that we have a provision in the bill that was submitted which clarifies the jurisdiction of the District of Columbia, the Commission on Fine Arts, and of the National Capital Planning Commission. We did that because while they don't have jurisdiction over the Capitol grounds, this is a private developer and is a private/public partnership. It would offer some opportunities for questions to arise which we thought should be clarified in the law and relating to the fundamental separation of powers; the Legislative Branch as the heart of our Government cannot be beholden to another power or ask approval of the Executive Branch for what it wants to do. We thought it would be necessary to clarify it, particularly in light of some previous issues that arose, for example, with the sale of material in the Capitol to tourists. There was a lawsuit brought by the District of Columbia in an effort to collect taxes from that entity and so we clarify that issue in the bill so there isn't any question about it. If it were purely a matter of a Federal building being built there, we wouldn't have put that in.

A third item that I want to discuss, Mr. Chairman, is an amendment that I would like to submit for the Committee's consideration regarding the financial support for security and for care and main-

tenance. We provide for that in the bill, and it's different from what the report proposes because there was a change in philosophy on the part of the Court with regard to how security should be handled. The security for the building for example, as you will note in the law that's proposed, is to be provided by the United States Capitol Police. Care and maintenance is to be provided by the Architect of the Capitol funding for which will be provided by the project so that we don't have to appropriate any money. It needs to be transacted in such a way as to enable us to pay the police with funds received from the project. And that wasn't in the bill. Otherwise, it would go into the General Treasury and then we would have to appropriate funds. It's a technical issue.

Senator MOYNIHAN. This has become a very valuable piece of rental property if the Capitol Police are protecting it.

Mr. WHITE. Well, that's right. In order not to appropriate any funds, we have to be able to take the money coming from the developer in the form of lease or rent and use it, rather than have it go in the Treasury and then have to appropriate funds. That's what this amendment is for. It's purely technical.

Senator MOYNIHAN. To be placed in the record.

[The amendment referred to follows:]

PROPOSED AMENDMENT S.1934

2(e) The Architect of the Capitol is authorized, under the direction of the Commission, to accept funds necessary to defray any costs incurred by the government for providing structural, mechanical, and domestic care and security to the building from the developer pursuant to any lease agreement concluded under Section 1(a). Amounts so paid shall be deposited in the Treasury and credited as additions to the appropriation account established for the Architect of the Capitol, with respect to expenses for structural care and maintenance and operations and domestic care of the building, and for the United States Capitol Police, with respect to expenses incurred in providing exterior and interior security to the building. Such amounts shall thereafter be disbursed on the order, respectively, of the Architect of the Capitol or the Chief of the United States Capitol Police to defray such costs.

Mr. WHITE. One other paragraph, Mr. Chairman. The recently-passed legislation authorizing a similar process to this, with which you are very familiar, for the International Trade Center project to complete the Federal Triangle, is an indication in my judgment of the wisdom of this process. Each of these projects buttresses the other in terms of its validity, and this one is no longer in the theoretical stage but is based on fact, based on marketplace, and ready to proceed.

One final sentence, Mr. Chairman. We have experienced full cooperation, assistance and support from all of the parties in this processing, including the Chief Justice—both Chief Justices—the Administrative Office of the Courts, the Department of Transportation, our consultants, and, of course, our in-house staff. I should like to take this opportunity to express my gratitude to all them. Thank you, Mr. Chairman.

Senator MOYNIHAN. We know that you want to include Secretary Dole, who is coauthor of the report with you.

Mr. WHITE. That's correct.

Senator MOYNIHAN. That is most extraordinary, helpful testimony, sir.

If I may acknowledge the arrival of two of our most valued colleagues, Senator Pressler and Senator Durenberger. We have the Chief Justice, who is still present with us, and I know you might wish to acknowledge his presence and make any opening statements that you might like to do.

Senator PRESSLER. I just noted on this map that the place the building is being built is the place where I have a South Dakota tree planted.

Senator MOYNIHAN. We can either move the tree or move the building. Let it be recorded that part of the design specifications will be to spare that tree.

Mr. Durenberger, did you want to make a statement?

Senator DURENBERGER. No, Mr. Chairman.

Senator STAFFORD. Thank you, Mr. Chairman.

I just had one or two questions, Mr. White, after listening to your testimony. If I understood you correctly, the building and the ground revert to the Federal Government after 30 years?

Senator MOYNIHAN. The grounds are ours.

Senator STAFFORD. The grounds are ours to start with but the building becomes Federal property at the end of a 30-year lease.

Mr. WHITE. Yes. Or prior to 30 years if it works out that way, but 30 years as a maximum.

Senator STAFFORD. And I think I heard you say that the rentals for the portion of the building utilized by the Federal Judiciary would be below market.

Mr. WHITE. That's correct.

Senator STAFFORD. Does that mean that some parts of the building will be otherwise rented in order to make up the difference?

Mr. WHITE. Yes.

Senator STAFFORD. How much?

Mr. WHITE. Approximately 40 percent of the building, initially, will be rented to the private sector; but the agreement will contain in it opportunities for expansion and developers know this. It's been stated in advance that every several years more space will be

needed by the Judiciary and in addition to that if private sector space becomes available, the Judicial Branch would have the right of first refusal for any space in addition to what the developer would be obligated to provide for over time.

Senator STAFFORD. Thank you. Otherwise it was hard to understand how you could get a developer to go in and build this building and still have to rent it to the Judiciary at a below market price.

Mr. WHITE. That's correct. He will make his money on the private sector rental portion and on the fact that he doesn't have to put up any money for land. The value of that land varies depending upon whom you ask, but it's in the neighborhood of $40 million. So we're putting in something of extreme value.

Senator STAFFORD. All right. Thank you for clearing that up.

Senator MOYNIHAN. I want to just say that the Chief Justice suggested that if we built this building when he first proposed it, we'd have been way ahead of what we've been dealing with. We have a rental bill now of $1.4 billion and Senator Stafford and Senator Burdick and others of us have been watching it double. You could put up a building that would fit the present needs of the Court and get it built and rent it. I think there are financial institutions, insurance companies who like those 30 year contracts with a good client—the Federal Government—and a steady rate; but you're anticipating the growth in the needs of the Courts itself. So at the end of 30 years it may be fully occupied. But we're going to build a building that in 30 years' time will be just as valuable, we hope. Mr. Burnham's building is more valuable today than it was when it was built. In a sense we don't build things like that anymore because we don't have Burnham around. In 30 years' time the population of the United States will have grown by 50 percent and the number of Federal judges will, also. It's not that we're getting more judges per person. It's just that there are more persons. It's a perfectly sensible thing.

Senator STAFFORD. There will certainly be more lawyers. But, Mr. Chairman, you and I may not have to worry about that 30 years from now.

Senator MOYNIHAN. No, sir. But we will plan for it. We will make no small plans. Thank you very much, sir.

Mr. WHITE. You're welcome, Mr. Chairman.

Senator STAFFORD. Thank you very much.

Senator MOYNIHAN. And, again, thank you, Mr. Justice, for honoring us with your presence.

If the committee will indulge me one minute on a point of personal privilege. I've been handed a note that says:

> Senator FYI—I just want to remind that some citizens' groups were hearing rumors that you might "let" George White build a taller building on the east of Union Station so that developers (including New York bidders) could also build a taller building on the west side, the Old Main City Post Office. NCPC turned down Studley's request to raise the height on the Main City Post Office.

I want that to be part of the record. I want to say that if there is anybody in this room who has heard such a rumor and wishes to repeat it to this committee, there will be ample time to do so at the end of our hearing.

Now, we have the great pleasure to hear from the director, Mr. Mecham. We welcome you, sir. Mr. Karam is with you, is that right? Mr. Karam, we welcome you.

STATEMENT OF L. RALPH MECHAM, DIRECTOR, ACCOMPANIED BY RAYMOND A. KARAM, ASSISTANT DIRECTOR FOR ADMINISTRATION, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. KARAM. Thank you, sir. Nice to be here again.

Senator STAFFORD. Mr. Mecham, I would say that we also congratulate you that you are here and not trying to run the State of Arizona.

Mr. MECHAM. Well, as Chief Judge Bilby, who was the Chief Judge in the Federal District in Arizona, assures the court employees out there I'm the good Mecham. However, I must also tell you that I am related to the gentleman. We tie in about five generations back. I hope, for the sake of the family, that somehow our reputation is preserved.

Mr. Chairman, Senator Stafford, Senator Pressler, it's a privilege for me to be here. Were it not for your leadership, we wouldn't be here. The Public Law would not have passed in 1986. The bill would not have been introduced, and we would not have this hearing. So I'm here to heartily endorse S. 1934 which Senators Moynihan, Stafford, and Burdick introduced.

It's been like coming home for me. I was one of the original occupants of this building. My sole contribution to it was to suggest to the staff of the then-chairman of your committee, Senator Dennis Chavez, that they had an insufficient number of elevators in the corner facing the Capitol, that they should have more elevators, more public access, and more of a ceremonial entrance. They ignored my recommendations.

I hope this committee will not ignore the ones I make today. I think they are equally good. The bill, of course, would authorize construction of a Judiciary office building on Capitol Hill.

May I, for the record, Mr. Chairman, submit some letters which Chief Justice Rehnquist had written to Senator Byrd in his capacity as Majority Leader and one to you, as well.

Senator MOYNIHAN. Yes, sir. That's very thoughtful of you.

[The letters referred to follows:]

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 21, 1987

Honorable Robert C. Byrd
Majority Leader
United States Senate
Washington, D. C. 20510

Dear Senator Byrd:

In early September, the Congress received a report submitted by the Architect of the Capitol and the Secretary of Transportation entitled "A Study of Alternatives for the Construction of an Office Building(s) for the Administrative Office of the United States Courts." The gist of the report was that it would be feasible to build a "monumental" structure on Capitol Hill to house the Judicial Branch support agencies and to do so without the use of appropriated funds. I want to express my wholehearted support for this concept.

The report recommends a private-public arrangement in which the building would be constructed by a private developer with the Federal Government being the major tenant. The new Judiciary Building would serve as the permanent home for the administrative, educational, and research needs of the Judicial Branch. Specifically, the building would house the Administrative Office of the United States Courts, the Federal Judicial Center, the United States Sentencing Commission, the Judicial Panel on Multi-District Litigation, and chambers for retired justices. These operations (or activities) are now scattered among seven different locations, which seriously impairs the efficiency of their service to the Judicial Branch of Government.

Under the most likely scenario, construction of the building would involve no appropriated funds and could result in a diminution in rent paid by the various Judicial Branch entities listed above. It is anticipated that the building would revert to total Federal ownership after thirty years.

On December 8, Senators Moynihan, Burdick and Stafford introduced S.1934, a bill to construct a new Federal office building for the Judiciary, consistent with the findings in the report discussed above. I note with pleasure that Mr. Moynihan intends to hold hearings on this bill early next year. Anything that can be done to move the process quickly is greatly appreciated.

I want to assure you of my support for this project and willingness to participate in the process to the degree the Congress sees fit. The Director of the Administrative Office of the United States, Mr. Ralph Mecham, is intimately aware of the background on this issue and the various alternatives. He would be pleased to meet with you if you would like to discuss it further.

Thank you for your consideration of this issue. An identical letter is also being sent to Senator Robert J. Dole.

Sincerely,

William H. Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 21, 1987

Honorable Daniel P. Moynihan
Chairman, Subcommittee on Water Resources,
Transportation, and Infrastructure
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Senator Moynihan:

I want to express my sincere thanks for your role in sponsoring S.1934, a bill to construct a new Federal office building for the Judiciary. As you know, the concept of building a "monumental" structure on Capitol Hill to house the Judicial Branch support agencies, and to do so without the use of appropriated funds, has my wholehearted support and that of the entire Judiciary.

I note with pleasure that you intend to hold hearings on the bill early next year. Anything that can be done to move the process quickly is greatly appreciated.

We remain available to provide any information that you may need as you proceed. Similar letters are also being sent to Senators Burdick and Stafford.

Sincerely,

William H. Rehnquist

Mr. MECHAM. I just want you to know that both Chief Justices are ardently in favor of this bill, and this letter from Chief Justice Rehnquist will establish that.

We have an increasingly critical need to house our agency. The Judicial branch agencies, who would be in the new building, are in seven different buildings with over 800 employees. It's inadequate for current staff, and we truly need, in the interest of efficiency and ability to serve the public and the judges of the land and their staff, to be housed more adequately. It's difficult to call a staff meeting when you have to bring people in from five or six different buildings to do so, and to really have adequate administrative control. I'm sure you would understand that.

May I just, Mr. Chairman, summarize my remarks and submit them for the record. This would cut my testimony about in half by doing so.

The statute, as Mr. White indicates, authorized funds to study alternatives for constructing the building adjacent to the Union Station. We're pleased with the study. It concluded that Plan D, particularly, is most economically advantageous to the government; and I must say the reason that we so solidly support this is because of the difficulty in getting direct appropriation funding for it. Based on our experience in trying to get money for the Judiciary, we have almost thrown up our hands and have said probably the only way we are going to get a building is to go into a partnership program with private development.

Senator MOYNIHAN. I just want to get ourselves clear. Perhaps you, George, can help. What do you expect the cost of putting up this building would be, in what range?

Mr. WHITE. Well, it varies, Mr. Chairman. But it can run anywhere from $80 to $100 million.

Senator MOYNIHAN. So starting with the fact that we have Federal land, we have a $120 million, $140 million building here.

Mr. WHITE. I'm sorry, I——

Senator MOYNIHAN. I say, we have $40 million worth of land to start with——

Mr. WHITE. That's correct. And one of the estimates that we made, and the reason that I was hedging is because it varies depending upon who you talk to, but it could be anywhere from—it could go up as high as $15 million for the cost of the building. Some developers will have lower costs than that, but that plus the $40 million is $155 million worth of real estate when you get through.

Senator MOYNIHAN. Thank you very much. I just want to make the record that there is no prospect of our getting an appropriation past OMB. It would be difficult even to get it through the Congress. Thank you very much, sir.

Mr. MECHAM. May I make an addendum to that. In the last budget process for fiscal year 1988, the Judicial Branch was cut $130 million below its needs. Through adroit management on the part of the committee by earmarking fees and through a providential carryover, we're probably going to be able to get it down to only $50 million short of our needs. We have all but been invited by some of your colleagues on the House Appropriations Committee to submit a supplemental appropriation request. We do not

have to go through OMB for Judiciary funding; we would for building funding, however.

So I would just underline the point that I think you are making. We're very pleased with the study plan, and the quality of the work—the excellent work done by George White and his staff. Design guidelines, as you know, were provided to the teams who were selected. They took into account the height restrictions for that property, and I can assure you that Chief Justice Rehnquist is very sensitive to the need to have an architectural design for the building that is compatible with the dignity of the Judiciary, and to maintain the aesthetic quality of Capitol Hill. Indeed, one of the provisions that you were kind enough to put in your bill expressly gives him authority to advise in that area. He's very sensitive to it.

So in particular the Architect's guidelines stated that the buildings could not be higher than the upper cornice of the Burnham Union Station and that is the case. We are very pleased with the work that the study teams did. I can multiply words but I think I should stop at this point and just say that we strongly support your bill and are pleased that you have offered it and hope you'll move it through expeditiously.

Senator MOYNIHAN. That's very generous, sir.

Senator STAFFORD. I have no questions.

Senator PRESSLER. Let me just ask a question.

Will there be parking under this building?

Mr. MECHAM. There will be 750 parking spaces beneath the building, 500 for Senate employees, 165, I believe it is, for the Judicial occupants, and I think it's in the 90's for the private occupants of the building.

Senator PRESSLER. There's a group of new movie theaters, as I understand it, going in and a shopping mall at Union Station. Are they providing their own parking?

Mr. MECHAM. I'm not clear on that. Perhaps Ray Karam may know. He was involved in that.

Mr. KARAM. There is a large parking facility behind Union Station that is being finished at this time which should, I understand, provide sufficient parking for all the activity at Union Station, both the transportation activities and the commercial activities.

Mr. MECHAM. I should mention, Senator, that Mr. Karam, when I first met him about a year and a half ago, was the Secretary of Transportation's representative to the study group that produced the report to the Congress on this new building, and is well acquainted with the Union Station and the surrounding area.

Senator MOYNIHAN. Now there's a man who knows suffering.

Senator PRESSLER. The height requirement: where is that—it comes from the statute of Congress—but are there any exceptions in that area?

Senator MOYNIHAN. We have a memorandum of law that Mr. White submitted which states—is Mr. Salyer your attorney?

Mr. WHITE. He is the Deputy General Counsel in my office.

Senator MOYNIHAN. Yes, sir.

Senator PRESSLER. Wouldn't it be much more efficient if we could make it twice as high? Is this a costly process to stick to this height?

Mr. MECHAM. I can give you my personal opinion. Surely from an economic standpoint, it would make a great deal of sense to make it twice or three times as high. From an aesthetic standpoint melding it into the Union Station and the Post Office would be a disaster.

Senator PRESSLER. It would be a disaster to build it higher?

Mr. MECHAM. Well, yes, that would be my opinion, if you wish to maintain the integrity of the monumental area there, of the Union Station, and the Post Office, and indeed the Senate Office Buildings to the south.

Senator PRESSLER. But what I'm saying is if you were designing this building on ideal basis of efficiency of spending the taxpayers dollars, aside from any restraints on height, how tall would it be?

Mr. MECHAM. Well, to meet our needs, the building is ample and will give us expansion room for the future. As Mr. White explained, we will have an opportunity to acquire space from the private occupants when it becomes available. So from our standpoint, it's an optimum development.

Senator PRESSLER. Because, I see down the road the plan, on Point I on this map. That future Senate Office Buildings will take up green space. We're giving up green space at the expense of keeping buildings low as a matter of policy. It seems that we're destroying grass and trees with this policy. Let's say we keep those two lots green that are between Delaware and D and C and Second Streets. In the future two whole lots will be paved over, literally, to meet this height requirement. Indeed, this is irrelevant to this building, I suppose, but I wonder how wise a policy that is because I see those two lots there now that have trees and grass will have buildings on them, probably as a result of the height requirement.

Mr. MECHAM. I think it would be more prudent for me to yield to Mr. George White, the Architect of the Capitol, to comment on that since I'm really not responsible for it. I would say that if you have an opportunity in Executive Session to see the models of these magnificent buildings they are proposing, I think you'd be pleased. And I think they would be even more beautiful than the green, yellow, blue, or brown cars that are presently on the two lots.

Senator PRESSLER. The last sentence of this Memo is In view of the foregoing, I must conclude that Congress made no sign that it intended in the 1910 Heights Limitations Act to apply to Capitol grounds. I guess this is off Capitol grounds, is that the idea?

Senator MOYNIHAN. No, sir. It is the judgment of the Architect that this is part of the Capitol grounds.

Senator PRESSLER. So, it could be built higher. In view of the foregoing, I must conclude that Congress made no sign that it intended the 1910 Heights Limitations Act to apply to Capitol grounds. Well, we can hear more about that later. But I hate to see the grass and the trees taken out. In terms of if we could get it done in one building, we might be able to keep it greener around here. That's my thought, Mr. Chairman.

Senator MOYNIHAN. Sir, we want to thank you so much for your cooperation in all this. Again, would you give this committee's special regard to the Chief Justice and we wish to move expeditiously.

Mr. MECHAM. May I say that they are readying your statue at Foley Square. The judges are planning to sculpt it themselves. Thank you so much.

Senator MOYNIHAN. Well, we want to do that. Mr. Pressler speaks of green space.

In the course of doing those two buildings, they are approved now and we'll go for it if we have agreement from the city. We want to get Foley Square back in the public space. It now has three streets that run north and south through Foley Square, two that bisect it, and on top of Foley Square you have something called Thomas Payne Park. On top of that you have something called Federal Plaza and it could confuse people. There's no air there anymore because of all that.

Mr. MECHAM. Our judges support you, sir.

Senator MOYNIHAN. You're very kind. And, Mr. Karam, it was a pleasure to have you.

Mr. KARAM. THANK YOU.

Senator MOYNIHAN. You know the history of the station and our means would be to bring the station back into being. Now, we have a very distinguished citizen of Washington, D.C., Mrs. Elizabeth Rowe, who has been everything but is now appearing here for The Committee of 100 on the Federal City.

I take this personal opportunity to welcome Mrs. Rowe and to tell her that if she didn't notice it in the newspapers that on Monday, the United States Senate adopted, by a unanimous vote, two international labor conventions: the first two in 35 years. You, who headed the ILO office in this city, ought to know that. We welcome you.

STATEMENT OF ELIZABETH ROWE, COMMITTEE OF 100 ON THE FEDERAL CITY

Mrs. ROWE. You've got a great memory. Thank you for your warm welcome. I'm very pleased to be invited to testify. Since the chairman seems to know me, I won't identify myself further.

I was chairman of the Planning Commission from 1961 to 1968. I represent today the Committee of 100 on the Federal City, which is identified in my written testimony and I'll skip that. But it is the oldest citizens' group interested in planning in the city.

We have felt that the 1910 Heights of Buildings Act was a very important element in planning the development of this city, and we have sought in every way we know to preserve the integrity of that act. Not too many years ago there was great pressure from developers to overturn the Act. it was exciting to see the amount of support for the limitation imposed by the Act, not just from people here, but from all over the country, from distinguished architects and planners and from Mr. George White, Capitol Hill Architect. Now there is no such pressure to overturn that Act; and our present Mayor, Marion Barry, is committed to the city's height limitation as spelled out in the 1910 Act. With that by way of preface, let me address the bill before us.

Our committee recognizes the need for the space for the judicial system. We have no quarrel with the extension of the Capitol grounds or the jurisdiction that would go with it. And we don't be-

lieve the Senator who is sponsoring this bill or the Architect of the Capitol wish to harm this great city—the city that owes so much to the interest taken in it by Presidents from George Washington on and to the contributions made to it by the Congress in its almost 200-year history.

But we are worried about section 5 of the proposed bill that would erase all previous legislation as it applies to the land where the new building would be erected. Specifically, we are concerned about the elimination of controls under the Building Heights Act of 1910 and would like to suggest an amendment that would leave that legislation in place.

The 1910 Act, besides setting limitations on heights across the city, speaks specifically to Squares 721 and 722 abutting the Union Station on the east, the site of the proposed building. The height here is set at 80 feet to fit into the design of Union Station and the plaza. The 80-foot limitation was enacted into law in 1905; and when the Building Heights Act of 1910 was passed, the 1905 Act was incorporated into that legislation.

I realize that Mr. White and I are not in agreement on the 80 feet but this is the way my committee feels. We realize that preliminary plans have gone ahead with the assumption for the 94-foot rather than an 80-foot building.

But now is not too late. Nothing is yet set in concrete. We hope the committee will give our proposed amendment serious consideration. The amendment would exempt the 1910 Heights of Buildings Act from the general section which erases all previous legislation. We feel that a damaging precedent would be set if the Congress erases it own legislation as it applies to one parcel of land. How could we be sure that in the future equally compelling arguments would not be made for other land in the city? Thus, the shield that has been so important in making this carefully planned city distinctive and preserving orderly developing would be lost.

Thank you for this opportunity.

Senator MOYNIHAN. And we thank you. Can I ask, did you have an amendment or will you send us one?

Mrs. ROWE. I think that's up to——

Senator MOYNIHAN. Can I ask you on present practices, do we have agreement that it is the case that the 80-foot limit anticipates and is understood to include an 18.5 penthouse that's set back on a 1 to 1 basis——

Mrs. ROWE. At the time when the 80-foot height limit was established, there weren't any penthouses.

Senator MOYNIHAN. I guess there weren't any elevators.

Mrs. ROWE. That was incorporated into the 1910 Act. Mr. White has far more experience than any of us in zoning questions and how the height of those superstructures, which really don't add to the skyline of the city, have been allowed.

Senator MOYNIHAN. Well, in New York City, they do. In the days when the architects were cheaper or what, they used to design wonderful things around those water towers up there on the 40th floor. Nobody could see them unless you were on the 50th floor. Mr. Chairman.

Senator STAFFORD. I have no questions.

Senator MOYNIHAN. The committee will stand in recess for 20 seconds.

[Recess.]

Senator MOYNIHAN. And now our final listed witness, Mr. David Sellin of the Citizens Planning Commission. Mr. Sellin, we welcome you. We believe you have more than a passing familiarity with the subject.

STATEMENT OF DR. DAVID SELLIN, CITIZENS PLANNING COALITION OF THE DISTRICT OF COLUMBIA ACCOMPANIED BY KATHRYN A. ECKLES, MEMBER OF THE BOARD

Dr. SELLIN. Before I introduce myself, I just want to say that I have some statements by colleagues, Patricia Schauer of the Capitol Hill Restoration Society, for the record.

Senator MOYNIHAN. Happy to include those in the record.

Dr. SELLIN. My name is David Sellin. I am D.C. resident and not with the Planning Commission, but speaking for the Citizens Planning Coalition, which is a city-wide citizens group with every ward represented on the board. I am voicing their position on the particular bill. I have some experience with this, in that I have a doctorate from the University of Pennsylvania, and was a colleague there of many of the people who prepared the Capitol Hill Master Plan, and have been on various other university faculties. Then, for a time, I served as the curator for the Architect of the U.S. Capitol; and George White used to call on my office frequently for information of the variety that he has provided you today.

I just want to point out that attached to my written testimony, which I will summarize briefly, there is the Building Heights Act of 1910—and I refer you to page 56, the second and third paragraphs:

> Building hereafter erected to front or abut on the plaza in front of the new Union Station provided for by act of Congress, approved February 28, 1903, shall be fireproof and shall not be of a greater height than 80 feet.

It's explicit. The second paragraph, above, refers to an amendment, a schedule, which is the following page. Item 6 of that schedule shows that the height limit was very carefully prepared to protect the Federal buildings of monumental quality (including the City Post Office by lowering the height of adjacent buildings across North Capitol). This was a very considered plan—that is, schedule of height limits. It was not invalidated by the 1973 Home Rule charter. It is still on the Federal statutes. I disagree with Mr. White's counsel because there are, perhaps, overlapping or contradictory jurisdictions here. But, obviously, one's own counsel finds one's own position when there is a question of doubt.

We hold that, in fact, the 1910 Heights Limit Act pertains to both the Station and the Post Office building, which is at 70 feet, not 80 feet, and the adjoining lot which is lot 721 and 722 and limited to 80 feet, not with penthouse but to the crown line that is, 80 all inclusive. And since the bill, by the way, excludes city zoning regulations from applying to the developer, we cannot expect the penthouse to be included as a matter of right. There is not matter

of right for an 18.5 foot penthouse on top of the roofline. Height is height and it is 80 feet.

On the last page of attachments I just include a very nice statement by Ed Bacon, the famous city planner, with regard to the necessity to hold to the height limit in order to preserve the monumentality of Washington, a horizontal city built really on an alluvial plain with very little topographic variation. At the time when Capitol Hill was selected for the site of the Capitol it was a promontory. It was large. It was in an open field. Hills rose around it in the topographical bowl. The Bullfinch dome, which sat like the one on the Massachusetts State House on Beacon Hill, was visible on Capitol Hill for miles. I need only point out what has happened to the Boston State House to warn against the encroachment on height limits.

Now, my written statement discusses—and I hope you do read it, I spent a good bit of time making it as terse and eloquent as possible—just simply gives the story of the Capitol expansion and the squashing of the Hill, basically. When Congress expanded, the dome had to go up. When the Dome went up, the mass squashed the Hill down visually. The two wonderful McMillan-planned House and Senate Office Buildings were put to about the height that is possible without diminishing the aesthetic impact of the Capitol and so were all of the buildings around it. That's when the Height Limit Act was enacted. Because the Station, to the North side, was really a separate grand entrance to the city, if that height limit is permitted to go up, it will simply diminish the impact of Capitol Hill.

Incidentally, the grading from those tunnels that Mr. White talked about was used for fill so that you don't have that impact. When you come out of Union Station, you look up to the Capitol and there's a gentle slope.

So our position, basically, is that the 80-foot height limit holds. We have no quarrel with the architects chosen—they're wonderful. The Master Plan is fine. However, I do think the Master Plan does show a building of 460,000 gross square feet for that site. I think the Architect's specifications came out with 520,000 square feet. If we took those two acres of extra space out of there, it would perhaps permit the building to be a viable building at 80 feet. I think that George White's own testimony before Congress in 1977 with regard to the height limit, is pertinent, and I quote Mr. White saying that:

> The building height limit is there, and lots of buildings are being built. It is only a question of the cost of the land. If someone gives you the land free, you can put up a one story building on it and have it economically viable.

That's on the last page of the attachments to my testimony, delivered before a Committee of Congress on May 24, 1977.

We aren't arguing with the use of the building. That is the prerogative of the Congress. We do believe that the cornice line of Union Station chosen for the height of the proposed building is the wrong one. It's the central core of the building that rises above the cornice line that is the one intended by the height limit. The cornice line of the wing of the station should be the determining factor.

I would be happy to answer any questions.

Senator MOYNIHAN. We want to get it clear what you think. We were working on the cornice line of the vault, and you have your thoughts as to the cornice line.

Dr. SELLIN. Well, if you look at—let's see, J in the Architect's prospectus shows the section—J, which gives you a 94-foot height. Now, mind you, that the grade is 57 feet above sea level—that's already filled 18 feet. A 14-foot difference doesn't sound like much on a building, but when you consider the impact of a 14 foot over height limit, that's quite a bit with this profile. The site really demands a building there.

Senator MOYNIHAN. There's something missing there.

Dr. SELLIN. There should be a building there. However, when you look at the cornice line, (K just below it—page K)—here is this marvelous "city gate," which by the way was planned as such when Burnham planned the Union Station, as the Congress had specifically stated that a site should be chosen subservient to the Capitol; that it should be a monumental building, but not compete with the Capitol. And, of course, the building sits there as the central focus of a plaza, embraced by two subsidiary pavilions. The Post Office is one of them—and that was recently, of course, under review by the NCPC, which turned down what to many of us and I was a witness against the project, was a quite high addition on top of the Post Office for private development.

Yes, you're right, page T shows the relative positions. Now there's a downgrade north from the station plaza. The central core of the station rises like a city gate, really like a Roman gate that it is intended to imitate, with rostral columns in front. It's a grand place. Burnham himself, by the way, planned a grand entrance to the Capitol from there. Glenn Brown had his Lincoln Memorial competition project in front of the plaza. I suggested to the Architect—it didn't get very far beyond a casual conversation—that he put the East Front columns around somehow to give accent to that particular plaza. It's marvelous I think they're going out of the Arboretum. If you look there at the proposed lot, it's on-grade, same grade as the plaza. The building could be built, but the specs are faulty. The specs should have said 80 feet and the architects would have built it. The client decrees and the architect complies. And so, frankly, I think the Architect ought to rewrite the specs and the architects ought to go back to the drawing board. It'll cost a little money and take a little time but not anything close to what the impact is going to be on the profile of the building. If this height limit is ignored, the Post Office might be next.

There has already been a height schedule violation. It went to the court. Perhaps this is not the place to say that one of the selected architects and one of the developers was involved in a case that has already caused considerable grief for The White House—on the site of the Old Rhodes Tavern which was the original and last remaining element of the old commercial downtown building height. Now it has gone up.

If you look at the entrance from New York Avenue to Washington, drive in and you suddenly see Union Station, and there is this pile behind it which is the parking garage. That parking garage rose to the height that is proposed for the new building without

any penthouse, but that site wasn't protected because it's behind Union Station. You'll notice the law says that it's the plaza in front and the butting that is protected. Now, we are really disturbed about this. There was no attempt to keep the public in the dark about this project, but there is—you know, it isn't an advertised project so that we've come fairly late in the game—a great deal of concern about this.

Senator MOYNIHAN. Thank you.

Mr. Chairman.

Senator STAFFORD. Mr. Sellin, just one or two questions occurred to me. I gather that you argue the 80-foot level as a matter of esthetics, and it has been very important to the appearance of this city from the time 1910 forward. Is it a fact that, indeed, in the District, buildings are allowed to have an 18.5-foot so-called penthouse for whatever reason?

Dr. SELLIN. Yes. I don't mean to imply that there's an 80-foot limit in Washington. The height limits are carefully defined in the rest of the plan by the width of the street plus 20. As a matter of right, penthouses are not only permitted 18.5 feet if they are set back properly, but they are not even subjected to design review. That's why you have these awful little cubes sitting on top of otherwise fairly regulated buildings sometime. There is no control or design review whatsoever for those things. They're simply plunked right on top. It's refreshing to see a little Baptistry of Pisa on top of a building.

But, no, buildings can go higher. On the other hand, that can be violated, too. Recently, you might know that in order to get an illegal height for Tech World, K Street was doubled. They, [the Mayor and D.C. Corporation Counsel] declared Mount Vernon Place, opposite Mount Vernon Square, as the second half of K Street; not New York Avenue; not Massachusetts Avenue; not Seventh not Ninth but the other half of K. So by doubling the street, they got a height limit beyond what would have been permitted. And, by the way, I know Mr. White knows all about these regulations because, as he says, he's been 18 years on the Zoning Commission and in the same 1977 talk cited above Mr. White gives his philosophy of development and zoning responsibilities as an ex-officio member, one of a five-person board of the Zoning Commission. So, Mr. White is fully aware of the problems. He is a lawyer and I am not. On the other hand, I'm speaking for others who also join me in this interpretation of the law.

Senator STAFFORD. Longer ago than I care to now think, I was a lawyer also. I learned the hard way not to ask questions when I wasn't sure of the answer; but I'm going to violate that rule now and ask you if you know what the height of the Hart Senate Office Building is here.

Dr. SELLIN. Yes.

Senator STAFFORD. What is it?

Dr. SELLIN. Excessive.

Senator STAFFORD. Well, that's probably your answer. Do you know what it is in feet?

Dr. SELLIN. No, I don't. But maybe Elliott Carroll could tell me. [Consultation.] It's approximately 123 feet.

Senator STAFFORD. Thank you very much.

Senator PRESSLER. Mr. Chairman, I'm just learning about some of these citizens groups. One thing I am curious about is just to learn how many members does your group have and when and where do you meet and so forth.

Mr. SELLIN. This is a chartered group of which I am a member, but not a board member. I can name some board members and perhaps there is somebody here who is a member of the board, by the way, who can answer that question. If I may ask Kathryn Eckles? She is a member of the board of The Citizens Planning Coalition. Is this in order?

Senator MOYNIHAN. It surely is. We welcome her.

Dr. SELLIN. If you could come——

Senator PRESSLER. You mean, as a charter group under the city government or Federal Government?

Mr. SELLIN. May I have a member of the board answer that?

Ms. ECKLES. Thank you, Senator Moynihan. My name, as Dr. Sellin stated, is Kathryn A. Eckles. I'm not a founding member of The Citizens Planning Coalition, which goes back to 1978 but I came in very, very early. We have hundreds of members. At one time I had the records in the files and we have—I wouldn't say 500, but we have a great number. We have a town meeting, one or two times a year.

We were formed basically—Mrs. Ann Hargrove, who is a city planner, and Miss Carol Curry, who was a White House staffer in the Johnson Administrative got this great idea and threw out the net and we all got in. It was in anticipation of the comprehensive plan mandated by the Home Rule. As you know, we got Home Rule in 1974. The first draft of the comprehensive plan was not available until 1982. Meanwhile, we still were working. And I must say that the fact that we have ward plans which takes this very large nebulous comprehensive plan—said a great deal and it specified nothing really. Thanks to our group, we were able to get the City Council to consider ward plans, which fine-tune these neighborhood concerns because, although we share many in common, we have a number of things that are pertinent to Ward 1 vis-a-vis Ward 8. But we found a community of interest. We are completely integrated. We have citizens from all walks of life: historians and city planners. And then we were able, through the activity and the input of this organization, to suggest that we needed further finetuning of these ward plans. Then we came up with what is called The Citizens Advisory Committee. Those were supervised by Mayor Barry and represented some 350 very civic minded and oriented citizens. We then took down and broke the ward plans down into more specific things. So, you see, we are active; and we do take a lot of interest.

Senator PRESSLER. How does a citizen join?

Ms. ECKLES. One pays $5.

Senator PRESSLER. Where's the office, how do you send it?

Ms. ECKLES. We don't have an office——

Dr. SELLIN. The president has an address at Arnold and Porter. If you wish, Laura Richards is the name of the president and John Woodson was the recent outgoing president. This is a legitimate charter. It's the de facto planning body in the city, since the city has really such a bad track record in its official city planning body.

It's thanks to The Citizens Planning Coalition and the Committee of 100 and other groups like this that there is any city planning here at all. Normally, it's an ad hoc BZA—Board of Zoning Adjustment—sort of thing or Zoning Commission. People keep coming in and precedents are set. That's why, by the way, precedent is so important in this case of the 80 feet.

Senator PRESSLER. What I'm trying to get to is this testimony cleared with the Board of Directors. You have about 500 members who pay about $5, then I understand. Is that right?

Ms. ECKLES. Some of the members might be delinquent, sir.

Dr. SELLIN. We put up with them anyway.

Senator PRESSLER. Some of these groups that appear before Congress—it's a very legitimate question. Exactly who do they represent? I'm not arguing with you. Now, how many dues-paying members do you have?

Ms. ECKLES. Probably 200.

Senator PRESSLER. Testimony such as this, is it cleared with the Board of Directors?

Dr. SELLIN. This testimony is cleared with the Board of Directors. And I would just ask the committee to keep in mind that, in presenting the written testimony, I have a Ph.D. and I am an art historian, and I have taught at—now the reason I go into this is that I approach this not only as a local individual, but I have taught at Tulane, University of Texas, University of Massachusetts, University of Pennsylvania and guest at Harvard Summer School. I've been on the faculties at Wesleyan and Colgate Universities. I'm a Smithsonian fellow.

Senator PRESSLER. I don't doubt you——

Dr. SELLIN. No, no, but what I'm talking about——

Senator PRESSLER. There's no doubt about you. I'm just trying to learn more about the group.

Dr. SELLIN. The group has authorized me to present their position. And the position has been cleared. It has been recorded in writing in the minutes in the List of Priorities of this group. The words and the rationale are mine, and my own position is a national position, because I regard this Capital City as one of the great treasures of this country and it should be on the I.C.O.M.O.S. World Heritage List of Sites. It's a marvelous plan, but that plan isn't only on the ground. It's also in elevation. It can't go any higher. I mean, you can just see Crystal City around Capitol Hill. But, yes, the position is taken by a legitimate group and it is recorded and I am speaking for them.

Ms. ECKLES. If I may just make some further comment. I think what you should all recognize, dear Senators and dear members, that a precedent is a very, very powerful instrument. And I'm going to quote from the writings of George Washington, 1799, and he made these comments—or these comments were made to him because it's a land-use matter, and it seems that we've land-use matters from the cave men time. And this was advice to our founding father. "A precedent, once admitted, will be universally sought." I've used that often, and I'm going to use it just as long as I have breath because it's 200 years old and 200 years wise.

Senator MOYNIHAN. And we thank you very much.

Ms. ECKLES. I have a st .tement for the record. May I present it for the record?

Senator MOYNIHAN. We would be happy to put that in the record, and Dr. Sellin, we thank you very much. You've been very helpful.

Dr. SELLIN. Thank you, sir.

Senator MOYNIHAN. I have a letter that was addressed to Mr. White by Senators Ford and Stevens on behalf of the Rules Committee. I would like to put it in the record. (See. p. 43.) Earlier, I invited anyone who wished to come forward and speak to the question of the development of the City Post Office. Seeing no such person rise, I thank our guests, I thank our witnesses in particular. I thank my dear colleague for staying through to the conclusion. The hearing is adjourned.

[Whereupon, at 3:40 p.m., the subcommittee was adjourned.]

[Statements and other material supplied for the record and the bill, S. 1934, follow:]

Washington, DC 20515

Statement of
George M. White, FAIA, Architect of the Capitol
before the
Subcommittee on Water Resources, Transportation,
and Infrastructure
Committee on Environment and Public Works
United States Senate
February 3, 1988

Thank you, Mr. Chairman, for the opportunity to comment briefly regarding S.1934, to authorize construction and leasing of a building immediately east of Union Station to house agencies of the Judicial Branch of the government, as described in the report that was submitted jointly by the Secretary of Transportation and myself in August, 1987.

With your permission, Mr. Chairman, I shall briefly highlight the report and then try to answer any questions that the Committee may have.

I think that it may be useful to state our conclusions first and then describe the process.

We recommend that a public-private arrangement be authorized whereby the building would be constructed by a private developer with the Federal Government as a major tenant. Title to the land, which is a part of Capitol Grounds, would remain in the Government, with the building reverting to Federal ownership in 30 years. No additional appropriated funds would be required.

The rental rates for the Federally occupied portion of the building will be substantially below market rates. In effect, the value of the land that the Government furnishes is the basis for a free building and bargain rental rates.

The proposals from five developer-architect teams are negotiable but have a 'shelf life' because of changing financial circumstances. It is therefore urgent that some action be taken in the relatively near future in order to take full advantage of the proposals.

Mr. Chairman, as you know, this report was prepared in response to legislation enacted in P. L. 99-229 that grew out of the interest of the Congress in finding a more economical solution to providing for the needs of the Administrative Office than had been proposed by GSA. The wisdom and perception of the Congress is evidenced by the major benefits that the recommendation will achieve. The report follows the requirements of the law and examines the various alternatives provided therein.

Mr. Chairman, because this is one of the most important monumental areas of our Capital and has received a great deal of study and attention in our Master Plan, which was submitted in 1981, a major consideration in our efforts was to be certain that the architecture of the building and its urban design characteristics would be the finest that could be achieved.

The economic considerations are, of course, of great importance as well. It was therefore incumbent upon us to achieve a reasonable balance so that neither the architectural nor the economic consideration alone controlled the process.

We engaged two firms to assist us in this endeavor; an architectural firm named 3D International and an economic counseling firm named GA/Partners. In my judgment, these are two of the finest firms in their respective fields and both have extensive experience in the office building field.

Because of the need to place reasonable but firm constraints on the architecture, and thus to enable an architectural competition to be held which would result in a design that would be appropriate for this unique site, we and our consultants engaged in an intensive study effort to achieve that end.

In order to retain the flexibility needed to minimize development costs and maximize economic benefits, it was decided to conduct the competition through developer-architect teams. As you know from the report, the teams that were selected on the basis of pre-established criteria, are among the finest in the nation. The results have met, if not exceeded, all of our expectations. We are, therefore, confident that Congressional approval of our proceeding further will enable all of the Congressional goals to be reached for this project.

Mr. Chairman, the recently passed legislation authorizing a similar process for the International Trade Center project to complete the Federal Triangle is a further indication of the validity of this process, particularly since that project is still in the theoretical stage whereas this one is now based on fact and ready to proceed.

Mr. Chairman, we have experienced full cooperation, assistance and support from all of the parties in this process, including the Chief Justice, the Administrative Office of the U. S. Courts, the Department of Transportation, our consultants and, of course, our in-house staff. I should like to take this opportunity to express my gratitude to all of them.

Thank you, again, Mr. Chairman, and I shall be pleased to respond to questions.

THE ARCHITECT OF THE CAPITOL
1793

Washington, DC 20515

P 64

February 1, 1988

HAND DELIVERED

The Honorable Daniel P. Moynihan
Chairman
Subcommittee on Water Resources, Transportation,
and Infrastructure
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

As you know, on December 8, 1987, you introduced, along with Senators Burdick and Stafford, S. 1934 to authorize construction and leasing of a building adjacent to the Union Station to house agencies of the Judicial Branch of the government.

On December 9, 1987, Senators Ford and Stevens addressed a letter to me (a copy of which is attached for your reference) in which they made a number of very pertinent and useful observations regarding the draft bill upon which S. 1934 was based.

In coordination with the Administrative Office of the United States Courts, we have reviewed the December 9th letter and have in the attached analysis provided our recommendations as to each of its comments.

Sincerely,

George M. White, FAIA
Architect of the Capitol

Enclosures

cc: The Honorable Wendell H. Ford
The Honorable Ted Stevens

WENDELL H. FORD, KENTUCKY, CHAIRMAN
CLAIBORNE PELL, RHODE ISLAND
ROBERT C. BYRD, WEST VIRGINIA
DANIEL K. INOUYE, HAWAII
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ALBERT GORE, JR., TENNESSEE
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JAMES O. KING, STAFF DIRECTOR
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GAIL S. MARTIN, CHIEF CLERK
WAYNE A. SCHLEY, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, DC 20510-6325

December 9, 1987

Mr. George White
Architect
U. S. Capitol
Washington, D. C. 20515

Dear George:

This will acknowledge your joint letter, with Mr. L. Ralph Mecham, of November 9, transmitting for our review and comment the draft legislation to authorize the construction and leasing of the new building for the Administrative Office of the United States Courts.

It is our understanding that the authors of the legislation have deliberately left open certain policy decisions for the appropriate committees to make. We recommend that when you have received the comments from all the members to whom the draft has been sent, that these decisions be made before the bill is introduced.

Section 1(b)(2) does not contain provisions for competitive bidding and other procurement conditions for both the master lease to the government and the actual selection of the developer team.

In Section 1(c)(1) of the proposed bill we note there is no provision made for a "chairman" or presiding officer of the Commission for the Construction of a Judiciary Office Building. It seems to us this should not be left as an open matter to be determined later by the Commission itself. We also note that the composition of the Commission makes no provision for minority party representation, and we believe that should be changed.

Section 2(d) seems to imply that exclusive police authority over the building, including non-governmental tenants, will be exercised by the Capitol Police force. If this is not intended, it should be addressed and resolved before introduction of the bill.

Finally, it seems in Section 3(c) that when the Chief Justice, or his designee, believes additional space is required for the use of the United States Courts, it must be provided as soon as possible by the building owner. We suggest that the bill include language requiring a termination on reasonable notice provision in all non-governmental leases. It might even be appropriate to specify a not less than six or twelve month period.

We appreciate this opportunity to look at the bill in advance and trust our comments will be useful to you.

Sincerely,

Ted Stevens
Ranking Minority Member

Wendell H. Ford
Chairman

ANALYSIS AND RESPONSE TO COMMENTS ON S. 1934
CONTAINED IN DECEMBER 9, 1987 LETTER
FROM SENATORS STEVENS AND FORD

Comment: "Section 1(b)(2) does not contain provisions for competitive bidding and other procurement conditions for both the master lease to the government and the actual selection of the developer team."

Response: Public Law 99-229 directed the Architect of the Capitol and the Secretary of Transportation to undertake a comprehensive study of alternative means of constructing the proposed building. Assisted by two prominent architectural and economic consultants, an intensive competition was conducted among architect/developer teams. Requests for qualifications were issued to 45 leading private sector developers during October 1986. On November 17, 1986, 19 responses were received. After review of the 19 responses, five developers together with their architects were selected as best qualified to proceed to the Request for Proposal stage. Accordingly, any additional competition would be unnecessarily duplicative and time consuming, as well as unfair to the five architect/developer teams who have invested substantial time and effort in the project. It is felt that the five teams that have been selected as finalists constitute a large enough pool to permit the government to competitively negotiate both costs and design.

Recommendation: No action

Comment: "In Section 1(c)(1) of the proposed bill we note there is no provision made for a "chairman" or presiding officer of the Commission for the Construction of a Judiciary Office Building. It seems to us this should not be left as an open matter to be determined later by the Commission itself. We also note that the composition of the Commission makes no provision for minority party representation, and we believe that should be changed."

Response: Neither the Architect of the Capitol nor the Administrative Office of the United States Courts has a strong preference respecting these matters. However, both are of the view that it would be desirable to the selection of a chairman to be left to the members of the Commission. As to minority representation on the Commission, neither the Architect of the Capitol nor the Administrative Office of the United States Courts has any objection, provided the structure of the Commission does not as a result become unduly complicated or unwieldy.

Recommendation: Amend Section 1(c)(1) of S. 1934 by adding a new subsection (G), as follows:

(G) The ranking minority members, respectively, of the Senate Committee on Environment and Public Works and the Committee on Public Works and Transportation of the House of Representatives.

Comment: "Section 2(d) seems to imply that exclusive police authority over the building, including non-governmental tenants, will be exercised by the Capitol Police force. If this is not intended, it should be addressed and resolved before introduction of the bill."

Response: The express intention of Section 2(d) is, indeed, to confer exclusive police jurisdiction over the building and its grounds on the United States Capitol Police.

Recommendation: No action

Comment: "Finally, it seems in Section 3(c) that when the Chief Justice, or his designee, believes additional space is required for the use of the United States Courts, it must be provided as soon as possible by the building owner. We suggest that the bill include language requiring a termination on reasonable notice provision in all non-governmental leases. It might even be appropriate to specify a not less than six or twelve month period."

Response: Consideration was given to including similar limitations on non-governmental leases during the drafting of this bill. However, because of the potential economic impacts of such limitations, it was decided to leave such matters for resolution in the negotiation process. The government's economic consultant, after evaluating this recommendation, urged that it not be adopted in law because of the potential for adverse impact on the economics of the "deal."

Recommendation: No action

STATEMENT OF

L. RALPH MECHAM, DIRECTOR

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U. S. SENATE

FEBRUARY 3, 1988

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to come before you today to heartily endorse S. 1934, a bill to authorize the construction of a judiciary office building on Capitol Hill. This building would serve as the home for the Administrative Office of the United States Courts, the Federal Judicial Center and other agencies serving the Judicial Branch of the United States Government, and retired Justices of the Supreme Court. I want to express my sincere thanks to Senators Moynihan, Stafford and Burdick for introducing the bill and your willingness to convene a hearing so quickly on this issue of such great importance to the Judicial Branch.

The Judicial Branch has experienced an increasingly critical need for this building for nearly 20 years and, as time goes on, the need becomes more pressing. The 600 people in the Administrative Office are currently spread around in leased space in five different buildings throughout the metropolitan area. In addition, the Federal Judicial Center is in three buildings and the United States Sentencing Commission is in yet another building. In total, just under 800 judicial branch employees are housed in seven different buildings. This space is inadequate to meet current staffing needs, let alone future needs of the Judiciary. This dispersion of support personnel throughout the city in leased property is inefficient and costly. Since the Administrative Office and the Federal Judicial Center are directly responsible to the Chief Justice, a location near the U. S. Supreme Court is highly desirable.

In 1986, the Congress recognized this problem of dispersion with the passage of P.L. 99-229. This statute authorized funds to study alternatives for constructing a building adjacent to Union Station for the Administrative Office and other judicial functions. The study included an assessment of alternative sizes and designs for the building; an analysis of other commercial, governmental, cultural, educational, and

related activities which could be located in the building; and an analysis of methods for financing and constructing the building that would minimize or eliminate the initial capital investment by the Government.

That study was completed by the Architect of the Capitol and the Secretary of Transportation, in consultation with the Chief Justice of the United States, and their report was transmitted to the Congress on August 10, 1987. The study evaluated several options and concluded that the most economically advantageous alternative to the Government was to have a private developer construct the building, with the Government providing no funds for construction costs. As a part of such an arrangement, we prefer that the Government pay a reduced rental rate while the developer pays a commensurately lower rate for the ground lease. We are pleased that this is the alternative incorporated in S. 1934. Finally, ownership of the land at all times remains with the Government and ownership of the building would revert to the Government at the end of a specified period of time. Ownership of the building will eliminate the need for rental payments by the Judiciary in the future and will possibly generate revenue for the Government from other tenants in the building.

As part of the congressionally authorized study, the Architect of the Capitol sent out 45 requests for qualifications to some of the most prestigious and responsible developers and architects in the Nation. Design guidelines were provided to the teams that took into account the mass and height restrictions for that property. In particular, the guidelines stated that the building could not be higher than the upper cornice of Burnham Union Station.

Nineteen responses were received and reviewed, and five developer-architect teams were selected as best qualified to submit proposals. The proposals are of the highest quality and meet both the architectural and financial considerations outlined in the law authorizing the study, including the height restrictions in the Design Guidelines. Not only do the proposals present innovative designs for the building, but they prove that, when tested in the market place, the private developer option is fully feasible. I must emphasize, however, that these proposals must be acted on in the near future if they are to remain valid.

The Judicial Branch strongly supports a public/private partnership for constructing a building. The study conclusion has also been endorsed by the U. S. Commission on Fine Arts, the U. S. Department of Transportation, the General Services Administration, the Union Station Redevelopment Corporation, and the Architect of the Capitol.

With regard to the Architect of the Capitol, let me say that we have been very pleased to work closely with George White and his staff. They have done what we regard as an outstandingly professional job, and we are very grateful for having the opportunity to work with them. And, I am pleased to tell you that we and the Architect of the Capitol were able to reach agreement on all aspects of the draft legislation, which you so graciously introduced.

I might emphasize the legislation has been approved in concept by the Chief Justice. In particular, the Chief Justice believes his responsibilities require him to retain approval authority of the architectural design of the building to assure that it is compatible with the dignity of the Judiciary and to maintain the aesthetic quality of the Capitol Hill area. Similarly, the Director of the Administrative Office should be actively

involved in the construction and development of the building through his membership on the Commission for the Construction of a Judiciary Office Building. We are pleased that you have incorporated both of these provisions in your bill.

In our hearing before the House Subcommittee on Public Buildings and Grounds last year, two areas of concern were raised that I would like to touch on briefly before concluding my remarks. The first related to security of the building. This has been resolved in S. 1934. Section 2(d) gives the United States Capitol Police responsibility for providing all exterior and interior security of the building. The Architect of the Capitol and the Chief Justice may, however, make alternative arrangements for interior security. Finally, nothing would interfere with the obligation of the Marshal of the Supreme Court to protect retired Justices, officers, employees, or other Supreme Court personnel who may on occasion occupy the building. This security arrangement has been agreed to by the Capitol Police.

The specific terms and conditions of a contract with the developer is the other area of concern. We support the conclusion of the Architect of the Capitol that these provisions should be left to the contract negotiation stage in order to provide maximum flexibility for the Government to get the "best deal." The Congress will, however, be fully involved in the contract negotiation process through the Commission, which directs the Architect of the Capitol in all aspects of his work. If, on the other hand, you would like us to reconsider this matter, we would certainly be prepared to do so.

Regarding the Commission membership, we agree with Senators Ford and Stevens that there should be minority membership on the Commission and suggest that the ranking minority members of the Senate Committee on Environment and Public Works

and the House Committee on Public Works and Transportation be added to the Commission membership.

Mr. Chairman, the public/private partnership for constructing a building as delineated in S. 1934 meets everyone's needs. It provides the Administrative Office and other Judicial agencies with the space they need, it does not require appropriated funds for construction, it allows for a low rental rate, and it gives the Government a building at the end of a specified period of time. It is a good idea from every angle and we urge the Congress to act quickly to enact S. 1934. We remain available to provide any additional information you may need and to work with you on any revisions to the legislation that might be necessary.

This concludes my prepared remarks. I would be pleased to respond to any questions you or members of the subcommittee may have.

COMMITTEE OF 100 ON THE FEDERAL CITY
THE YOST HOUSE, 1002 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003

FOUNDED 1923

STATEMENT ON PROPOSED BILL S.1934

BEFORE THE SUBCOMMITTEE ON WATER RESOURCES,

TRANSPORTATION AND INFRASTRUCTURE

OF THE U.S. SENATE

FEBRUARY 3, 1988

Mr. Chairman, Members of the Committee:

Thank you for asking me to testify before you. My name is Elizabeth Rowe. From 1961 to 1968 I was the chairman of the National Capital Planning Commission.

Today I represent the Committee of 100 on the Federal City, of which I am a trustee. Our Committee is the oldest planning group in the city, having been founded in 1923. Over the years, it has served as a forum for the discussion of the principal planning issues of Washington. The membership is made up of citizens from all sections of the city and some of the close-in suburbs.

In our study and review we have realized the importance of several elements of overriding importance in preserving and enhancing the qualities of this great city. One of them, the Building Height Act of 1910, we believe has been the shield protecting Washington from development pressures that would have seriously altered this beautiful city where the Capitol dome and the national monuments dominate the skyline, where we can see the sky and walk in the sunshine.

Not too many years ago there was great pressure to remove the height limitation, and legislation was introduced in the Congress to overturn the 1910 Act. Opposition to this proposal came from all over the country -- from distinguished architects and planners and from the Architect of the Capitol. There has been no such pressure in recent years. Pennsylvania Avenue has ben planned and is being built under the constraints of the Act of 1910. And the mayor, Marion Barry, is committed to the retention of the height limitation.

With that by way of preface, let me address the bill before us. Our Committee has no quarrel with the extension of the Capitol Grounds and the jurisdiction which goes with it. We don't believe the Senators sponsoring this bill or the Architect of the Capitol wish to harm this great city -- a city that owes so much to the interest taken in it by many presidents from George Washington on and to the contributions made to it by the Congress in its almost 200-year history.

But we are worried about Section 5 of the proposed bill that would erase all previous legislation as it would apply to the land where the new building would be erected. Specifically, we are concerned about the elimination of controls under the Building Height Act of 1910 and would like to suggest an amendment which would leave that legislation in place.

The 1910 Act, beside setting limitations on heights throughout the city, speaks specifically to Squares 721 and 722, the site of the proposed building. The height here was set at 80 feet to fit into the design for the Union Station and plaza. The 80-foot limitation was enacted into law in 1905 and when the Building Height Act of 1910 was passed, the 1905 Act was incorporated in that legislation.

We realize that preliminary plans have gone ahead with the assumption that 94 feet rather than 80 feet would be the building height. But now is not too late. Nothing is set in concrete. We hope the committee would give our proposed amendment serious consideration.

We feel that a damaging precedent would be set if the Congress erases its own legislation as it applies to one parcel of land. How can we be sure that in the future equally compelling arguments would not be made for other land in the city? Thus the shield that has been so important to making this carefully planned city distinctive and preserving orderly development would be lost.

Thank you for this opportunity to appear before you.

STATEMENT OF DR. DAVID SELLIN FOR THE CITIZENS PLANNING COALITION OF THE DISTRICT OF COLUMBIA IN RE BILL S. 1934

A great city plan such as that which established Washington is not simply etched upon the surface, but has both topographical and constructed elevation. Capitol Hill, with two hundred years of grading and leveling and land fill, has little remaining of the prominence that was conspicuous when chosen for the site of the U.S. Capitol building in 1791. Then, rising from the flat land of the topographical bowl, it had the symbolic height of the Ancient Republican Capitol that gives the building its name, and the building that crowned the pedestal by 1825 could be seen from the distance of many miles, a symbol of National significance. But visual prominence is entirely relative, dependent on scale. Thirty years later the splendid dome was reduced to a bubble by the wings that were required by an expanding Congress. It looked ridiculous. A new dome, a new National symbol, was elevated to a height proportioned to the extension. Less than forty years later, in 1902, the McMillan Commission produced a plan that restored and renewed much of the old grandeur of the l'Enfant plan, and added a new concept of Classic monumentality. Part of that plan was the organization of the Capitol grounds to the east, surrounding the Olmsted Plaza. It provided matching, bilaterally symmetrical Offices for the Senate and House, beautifully designed and proportioned and detailed by Carrere and Hastings, and of a maximum height compatible with the building they served. The Library of Congress had proved that the sky is not the limit. Monumentality is not a question of size, but of scale and proportion. The Hill cannot be made higher. The Capitol cannot be extended without diminishing the dome. The Dome cannot be made larger without squashing the visual impact of the hill, let alone the bearing wall of the Rotunda. The office buildings cannot be raised without ruining the Capitol. And below them in elevation to the North, buildings cannot be erected that will diminish the mass and monumentality of the office buildings envisioned by the McMillan plan.

In recognition of this fact, and impelled by the lessons of the Library of Congress and speculative development downtown at the Cairo Apartments, Congress enacted legislation to protect itself and future generations of American citizens and visitors from any diminution of monumentality and grace in our reciprocal vistas by short term speculation. On June 1, 1910, a height limit act was legislated to protect in perpetuity the monumentality of certain public buildings by regulating their surroundings, as well as to control rampant speculative development from fouling the overall city plan. This act was not affected by the Home Rule charter of 1973, and is still in force. The building lots behind the Capitol complex are carefully regulated to be well below the height allowed by D.C. Zoning laws, including those to the North of the building in which we sit. The law may not have anticipated the sprawl of the boundaries of the Capitol grounds, which have annexed territory to the edge of Columbus Plaza and Union Station, creating jurisdictional problems within the Federal body itself. It certainly did not anticipate that the public buildings would be privately developed because the Government had no money to house itself.

Union Station and its surrounding plaza and flanking pavilions were designed by the architect of the McMillan plan itself, and intended to serve as a monumental gateway to the Capitol and the city, visually removed from the Capitol building, above, and with its own scale subservient to the mass of the dome. It does that very effectively. The vault, seen horizontally, springs from the arched center core, flanked by low wings. The Post Office was designed by the same architect Daniel H. Burnham to a height no higher than the cornice line of these lateral wings. That he intended a symetrical arrangement of a sort provided for the House and Senate office buildings on the hill is certain, and the Post Office itself, although lower than the Central core of the Station, is itself protected from being overshadowed by construction opposite, on the far side of North Capitol Street. As for the station, plaza, and the unbuilt side now under consideration in this S. 1934, the Act of 1910 is explicit: "Buildings hereafter erected to the front or abut on the Plaza in front of the new Union Station shall not be of a greater height than 80 feet."

The proposed Judicial Office Building specifications clearly violate the law in suggesting to competitors that they may build to 94 feet to the crown line. The limit is, and should remain 80 feet, in order to protect the integrity of both Union Station and the Capitol complex. For the Congress to fail to enforce this would be a tragedy beyond redemption. It attacks the very module and focus of a great city plan, and through dubious claims of need for private development on the very grounds of the Capitol. I will not engage the necessity of expanding space for a separate branch of Government, which the original 1791 plan saw as clustered in a different section of the city, separate from both Administration and Legislation. But, in this case,

unlike the 1850 expansion, and that planned in 1902, the very use proclaims the lack of need for more legislative space.

Whatever the use, there is a building called for on the lots under consideration. It was intended, and suggested in the 1981 Master Plan. There can be no quarrel there. However, the 1981 plan calls for 460,000 gross square feet above grade, and proposes no height. An eighty foot building can accommodate that space.

The specifications for the project put forward by S. 1934 show a height of 94 feet, with a justification that it corresponds with the cornice line of the Station. The cornice selected is the cornice of the central block that rises above the wings. It is this lower cornice line that establishes the eighty foot level that is legal. Rise above that on the site, and the visual impression of a monumental city gate that the Station presents is lost. And the impact of an actual hill rising upward to the seat of Congress is lost. The planning team that produced the 1981 Master Plan was extremely conscious of this separation and the sensitivity of the transition, as was the Master planner of the MacMillan Commission, the architect of the Station complex.

It should be noted that the site behind the station is not regulated by the language of the 1910 act, which did not envision a parking garage, which rises to the point of the springing of the vault—exactly the height suggested by the Capitol Architect for the site that is protected. A thoughtful examination of the garage will show how obstrusive the new building would be, as proposed, from the plaza. Senators might take a look from the inner sanctum of the Marble room behind the Chamber, or from the plaza north of the Senate wing. But the garage will be torn down. The building proposed by S. 1934 is permanent. If constructed, it invites further erosion of the height limit act. An addition to the Post Office has been vigorously promoted, but was rejected by the review process that the Bill denies for the proposed building. If this building is constructed, to match the height of a parking garage, will the same protection be afforded the Post Office, should it be acquired by the Congress, or will the objectional addition be reintroduced without the safeguards the law now provides?

The project specifications also propose a gross square footage of 520,000 for the Judicial Office Building, presumably to be rented for the untaxed development team to nongovernmental tenants. Cut down two acres, and the legal 80 foot limit can accommodate enough occupants to pay the rent. To quote the Architect who provided the specifications, George M. White, in testimony before Congress: "The building height limit is there, and lots of buildings are being built. It is only a question of the cost of the land. If someone gives you the land free, you can put up a one story building on it and have it economically viable." George M. White, Architect of the U.S. Capitol; May 24, 1977.

Architects design what the client requires and permits in the specifications. In the interest of intelligence planning, and in the interest of the Congress and the American people of future generations, we ask that you amend the Bill S. 1934 to enforce the existing legal 80 foot limit, grade to crown line. Instruct the Architect of the Capitol to rewrite the specifications according to law and good planning. It will send the competing architects back to the drafting room, and cost a little time and waste a little money, but will be well worth it in the long term.

THE BUILDING HEIGHT ACT OF 1910
(36 Stat. 452, 455)

June 1, 1910.
[H. R. 19070.]
[Public, No. 196.]

CHAP. 263.—An Act To regulate the height of buildings in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the date of the approval of this Act * * *

Streets less than 90 feet wide.

On streets less than ninety feet wide where building lines have been established and recorded in the office of the surveyor of the district, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, in so far as it controls the height of buildings under this law, shall be held to be the distance between said building lines.

Adjoining public buildings.

On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.

Abutting Union Station plaza.
Vol. 32, p. 913.

Buildings hereafter erected to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February twenty-eighth, nineteen hundred and three, shall be fireproof and shall not be of a greater height than eighty feet.

SCHEDULE OF HEIGHTS OF BUILDINGS ADJACENT TO PUBLIC BUILDINGS, AS ADOPTED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA, IN CONFORMITY WITH THE ACT OF CONGRESS OF JUNE 1, 1910, AND THE AMENDMENTS OF DECEMBER 30, 1910, AND MAY 20, 1912.

* * *

6. On North Capitol Street, in square 625, confronting the City Post Office Building, no building shall be erected or altered to be higher than a horizontal line 90 feet above the top of the curb

PREPARED STATEMENT OF EDMUND N. BACON, VICE PRESIDENT, DESIGN AND DEVELOPMENT, MONDEV INTERNATIONAL LTD.

This is an historic occasion. For the first time since 1902 Congress is taking a comprehensive new look at the City of Washington.

Again, it is Congress itself which is taking the initiative to try to make the city in which it resides a fitting expression of the highest aspirations of our culture. This augurs well for the success of this move.

We have in our hands the priceless opportunity to look back over the three-quarters of a century which has elapsed since the McMillan Report was written, and to compare what actually happened with what the makers of that report hoped would happen. I think this gives us the key to the kind of forward look we should be taking now.

MCMILLAN REPORT

The remarkable thing about the McMillan Report was its extraordinary courage, far-sightedness and depth of vision. I would venture to say that no one, when the report was first issued, when the great Jules Guerin drawings were first revealed, and the great models were first unveiled, really believed so daring a vision would ever come to be.

Yet here the City of Washington stands today, completely transformed from the rather grubby town that McMillan and his Commissioners found. Many of the outlines of L'Enfant's concept for it were obscured by ill-advised and fragmentary "improvements"; the railroad was running across the Mall, the vista from the Capitol to the Washington Monument obscured by romantic gardens and structures.

Yet so powerful was the impact of the great new vision that the integrity of the Mall and the other principal features of the L'Enfant plan were reestablished, both on the ground and in the minds of the people to the extent that the monumental aspects of Washington are moving forward with a powerful momentum.

HEIGHT LIMITATION

What is needed now is enough restraint so that the older values are not destroyed by the new. The present height limitation on structures must be retained to preserve the integrity of the total design, and to keep the great symbols of our national unity, the Washington Monument and the Capitol dome dominant in the skyline. Well-meaning but ill-advised "improvements", such as the widening of Pennsylvania Avenue, must be avoided in the future. It is well to note that specially-appointed Commissions assigned some monumental task in a limited area almost always overstep their bounds, and, in their zeal, overdo their work in their limited space, throwing the overall structure out of balance.

What, then, for the vision of the future to match the McMillan Report.

May 24 1977
Hearings before the Comm. on the District of Columbia
H.R 95th Cong.
Serial # 95-40
GPO. 1977

STATEMENT OF KATHRYN A. ECKLES IN OPPOSITION TO THE HEIGHT OF THE PROPOSED BUILDING ON THE CAPITOL GROUNDS AUTHORIZED IN S.1934 AND TO THE AWARDING OF THIS PROJECT OR ANY OTHER PUBLIC PROJECT TO OLIVER T. CARR, JR.

BEFORE

THE SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

February 3, 1988

Mr. Chairman and Members of the Subcommittee;

My name is Kathryn A. Eckles. I have been a resident of the District of Columbis since 1948 and have long been active as a citizen in planning and historic preservation matters. During many walks around the Nation's Capital after coming to Washington, I learned to appreciate the aesthetic quality of the Congressionally-imposed building height limits on private development and how they protect Federal buildings, parks and memorial sites.

Senator Moynihan has often said that Thomas Jefferson, as Vice President, is the only unarguable genius to preside over the Senate. The Subcommittee might be interested to know that the first building height limitations in the Nation's Capital were drafted by Thomas Jefferson and promulgated by President George Washington in 1791. These early 40-foot height limits were imposed on private development, as have all subsequent regulations and relevant acts of Congress intended to protect the L'Enfant Plan vistas, and the prominance and architectural integrity of the White House, Capitol, U.S. Supreme Court, and other important Federal sites. Because of questionable, selective enforcement of current laws by the U.S. Interior and Justice departments, the protection of these sites has not been fully quaranteed in recent years, despite the existence of a Schedule of Heights, authorized in the Congressionally-imposed Height of Buildings Act of 1910. This act was preceded by an earlier building height limit passed in 1899 by Congress in response to the construction of the 160-foot Cairo Hotel in 1894 which still stands in my neighborhood near Dupont Circle.

The building on the Capitol Grounds authorized in S.1934 would rise, I am told, to 94 feet, in violation of the 80 foot limit set in Section 5 of the Height of Buildings Act of 1910 for buildings abutting Union Station

Plaza. While legal opinions may differ on whether the Height Act should apply here, there is no valid argument for Congress not to honor fully the provisions of that Act for all buildings erected on the Capitol Grounds. It is only fair and equitable that Congress honor the very height limits it imposes on private developers to protect the vistas of the White House, Capitol, U.S. Supreme Court and other important Federal sites.

Also, the building proposed in S.1934 is projected to contain 520,000 square feet, apparently in violation of the 460,000 square feet for that site as noted on page 71 of the Master Plan for the Capitol.

In the last (99th) Congress, the Committee on Environment and Public works held hearings on the impact of the height of the proposed PortAmerica project, a building seven miles to the south in Prince Georges County, Maryland, completely outside of the jurisdiction of the Height of Buildings Act of 1910. Those hearings were co-chaired by Senators Daniel P. Moynihan and Robert Stafford, with Senator Alan Cranston sitting at the courtesy of the Committee. Those hearings were highly critical in content and tone of the proposed height of PortAmerica. Federal witnesses, following Senator Moynihan's strong opening remarks critical of PortAmerica, representing the National Capital Planning Commission (NCPC) and the critical testimony of J. Carter Brown, Chairman of the U.S. Commission of Fine Arts and the Architect of the Capitol, George White, condemned the height of the Port-America proposal as "fundamentally detrimental to the Capitol and other L'Enfant Plan vistas" in the Nation's Capital. Now the Capitol Architect intends to violate, if so authorized by Congress, his own Master Plan and the spirit, if not the letter, of the Hieght of Buildings Act of 1910.

Indeed, let us remember that Senators Moynihan and Cranston introduced a bill, S.2537, in the last Congress that provided for fines of $1,000,000 for every foot built over a height limit set for a 3000 square mile zone around the District of Columbia. If this bill had been enacted, a private development, as proposed in S.1934 would be subject to a $14,000,000 fine or fee.

Let me close by bringing to the attention of the Subcommittee a very serious matter attendant to this proposal: Oliver T. Carr, Jr. is one of the finalists in the competition to develop the building authorized in S.1934.

It has now been clearly documented that Oliver Carr knowingly and willfully violated the Height of Buildings Act of 1910 in designing and constructing Metropolitan Square which overlooks the White House. The Schedule of Heights limits private construction at that site (Square 224)

to 95 feet. Carr has built to nearly 160 feet, counting a special exception and roof structures. Over 1000 pages of documents obtained by citizens since 1984 under Freedom of Information Act requests trace the Carr trail of manipulation of the political and regulatory processes to achieve his ends. Some of those documents are now in the files of the Committee on Environment and Public Works (see hearing record on PortAmerica, 99th Congress). All other documents are available upon request.

These documents reveal that NCPC staff wrote a report giving a 100 per cent negative evaluation as to effect upon the aesthetic ambiance of the White House Grounds (a National Park), revealed that there were (and there remain) serious security concerns of the U.S. Secret Service, and that at least two U.S. Interior department solicitors' opinions exist refuting the legality of the Council of the District of Columbia to amend the Schedule of Heights.

What happened? Carr's architect, David M. Childs, and the chairman of NCPC (entrusted with protecting the Federal interest) never convened the Commission to examine the negative evaluation. Instead the evaluation was passed on to James O. Gibson, Deputy to Mayor Marion Barry for Planning, who became Carr's agent to manipulate the project along. In a document containing many demands, Carr gave Mayor Barry ten days to remove all roadblocks. Mayor Barry personally spoke to First Lady Rosalynn Carter and was persuaded by the Mayor to issue a statement that she supported fully the Metropolitan Square project. There is no evidence that the Mayor mentioned the Secret Service concerns. Rosalynn Carter's statement neutralized any support for enforcement that might have existed at the time.

The still-standing Secret Service position that Metropolitan Square should never have been built above 95 feet was affirmed on the floor of the Senate on December 6, 1985 in remarks by Senators Moynihan, DeConcini, Abdnor, Lautenburg, and Hatfield (see Cong. Rec. Sen. 99th C, 1st sess, S 17044-S 17048). This all has been further affirmed in recent testimony of the Secret Service before NCPC asking for a special low-height zone around the Vice President's House for security reasons (see attached).

According to statements made to media and Capitol Hill staff sources the illegal height of Metropolitan Square costs the U.S. taxpayer a minimum of $350,000 annually, forever, in added surveillance, to provide protection (inadequate) against an attack upon the White House from Metropolitan Square.

Now, is Oliver T. Carr, Jr. to be rewarded with a public plum such as authorized in S.1934? Is Oliver Carr to be given a public project on the Capitol Grounds with no land acquistion costs and no taxes for 30 years?

PREPARED STATEMENT OF
STEPHEN J. HARRISON
DEPUTY ASSISTANT DIRECTOR
U.S. SECRET SERVICE
BEFORE THE NATIONAL CAPITAL PLANNING COMMISSION
PUBLIC HEARING
NOVEMBER 5, 1987

I would like to thank you for this opportunity to address the topic of developing a federal interest district around the Naval Observatory. The U. S. Secret Service views this as an important issue, since the creation of such a district will assist in providing for a safe environment at the Vice President's residence.

First, I would like to offer my appreciation for the continued assistance from the NCPC staff, specifically Reginald Griffith, George Oberlander, and Martin Rody. Their expert advice and willingness to work on this matter has been beneficial.

The Vice President's Official Residence was established by Congress through the enactment of Public Law 93-346 on July 1, 1974. Prior to the establishment of an Official Residence each Vice President maintained his own private residence. Largely due to ever increasing security concerns, and the attendant costs of security, the residence previously occupied by the Chief of Naval Operations at the Naval Observatory was designated as the Vice President's Official Residence.

The primary reason this specific site was chosen was due to its secluded setting which provided natural security benefits. In addition, Congress was very specific in its intent to curb recurring security costs associated with changing residences for each Vice President. Subsequently, Congress has allowed the Secret Service to expend monies to develop permanent security enhancements to the Official Vice President's Residence.

Today, the Vice President's Residence is a multi-use facility. It serves as the residence of the Vice President and family and thusly is used for private family events. While each Vice President's lifestyle is different, it is important to note that it is not only the actual residence that is used but the grounds of the Naval Observatory as well. For instance, this Vice President uses the jogging path and tennis court on a regular basis. In addition, a helicopter landing area is located within the Naval Observatory grounds which the Vice President uses exclusively.

The Vice President's residence is also used for Official functions. For instance, the Vice President frequently receives official guests, including Heads of State from foreign governments. Their visits to the Naval Observatory range from formal meetings and social events to charity tennis matches on the grounds. Many of these events are conducted outdoors and are exposed to any unobstructed view.

The Secret Service is mandated by law to provide protection for the Vice President, his family and the residence at the Naval Observatory. That protection attempts to be all encompassing. It is provided 24 hours a day, every day of the year. The philosophy of the Secret Service is to anticipate potential areas in which a protected person might be vulnerable to attack by an individual or group and to provide measures to counter the threat. Thus we are constantly surveying our surroundings and attempt to prevent any incident rather than react after the incident occurs. In furtherance of this philosophy the Secret Service continues to enhance the security features around the residence.

The specific threat posed by high rise buildings surrounding the Naval Observatory is that these buildings provide a vantage point from which an individual or group could cause harm to the Vice President, his family or guests. Certainly, past history has more than clearly demonstrated the terrible destruction which can be caused by a lone sniper from a position of high ground. The assassination of President Kennedy is the most tragic example of these type of incidents.

The sniper threat is very real today. Military as well as civilian sniper training in the United States routinely provide people with the ability to shoot a rifle with great accuracy from 500-600 yards. It is not uncommon to find persons with the ability to hit the intended target from as much as 1000 yards. In addition, other more sophisticated weapons of war could be launched from high ground vantage points.

As you might expect, the Secret Service does employ countermeasures to limit this threat. These countermeasures are extremely costly, manpower intensive and unfortunately may not be 100% effective. Such factors such as poor visibility caused by darkness or shadows affect the certainty of the observers. In addition, we are limited by the 4th Amendment to the Constitution regarding "intrusions" into a persons home or business without probable cause. We therefore may not be able to adequately observe certain areas on a continual basis. Finally, if the area is inundated with so many clear vantage points it becomes virtually impossible to observe all of them simultaneously.

The best countermeasure is to not allow the potentially dangerous vantage points to exist. Currently, the Secret Service is notified by the Washington, D.C. building permit office at the time a building permit is requested in the area around the Naval Observatory. Unfortunately, by the time a building permit is sought the developer has generally completed all of the architectural planning and is ready to begin the project. The Secret Service does not have any inherent authority to cause denial of the permit and usually finds itself in a costly and acrimonious situation with the developer in an attempt to get security concerns taken into consideration.

In summation, the Secret Service supports the concept of developing the Naval Observatory Precinct District. Limitations to the heights of buildings in this zone will allow the Secret Service to provide the same level of protection for the Vice President and the Official Residence in the future as is currently provided. Without the zone, the inevitable development around the Vice President's residence will create a potentially dangerous fishbowl effect. Similar to the White House, uncontrolled high rise development will have the undesirable effect of virtually holding the Vice President "hostage" to security concerns within the residential grounds.

Now I would be happy to answer any questions you may have.

DEPARTMENT OF THE TREASURY
UNITED STATES SECRET SERVICE

WASHINGTON, D.C. 20223

OFFICE OF THE DIRECTOR

FILE NO. 1908 Hist. Pt.
REFER TO
DUE DATE:

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CARTO.	GRAPHICS.
	HIST.PRES.

OCT 16 AM 10 52

NCPC

October 15, 1973

Mr. Reginald W. Griffith
Executive Director
National Capitol Planning Commission
1325 G Street, N.W.
Washington, D.C.

Dear Mr. Griffith:

Thank you for including the Secret Service in the preliminary stages of the Federal Interest Review of the proposed modifications to the special schedule of heights of buildings adjacent to the Treasury Building.

The proposal submitted by the Oliver T. Carr Company has been thoroughly studied by the staffs of the Presidential Protective Division and the Uniformed Division of the United States Secret Service. These divisions are responsible for the protection of the President and First Family and the overall security of the White House Complex, respectively. It is the unanimous opinion of both divisions and this office that any proposal which raises the current height limits on buildings near the White House would adversely effect the overall security of the White House Complex, and seriously interfere with our ability to provide protection for the President and his family as mandated by the U. S. Congress and the American people.

While the Secret Service concedes the fact that some portions of the roof levels of the Old Executive Office Building and the Treasury Building already afford limited views of the White House grounds, it must be understood that both buildings are controlled and secured by forces under the direct supervision of the Secret Service. However, in the event that favorable consideration is given to any of the Carr Company proposals, a situation would be created where a privately owned and operated office complex would have an unobstructed view onto the White House grounds, and this would present an uncontrollable situation from a security standpoint.

Aside from the security aspect, which of course is our primary concern, I would like to present a personal observation. Approval of the Carr Company proposal will represent a serious invasion of privacy to the President and his family. Obviously, any construction which would afford a view onto the South Grounds is in effect, building a platform over the President's backyard. It should be understood that the White House is the President's home and one of the very few places where he and his family can retire from public view. It is our sincere hope that before any of the proposals are adopted that the privacy of the President and First Family be given the utmost consideration.

I would like to assure you of this Service's continued interest in any future developments of this or any other proposal, and we appreciate any consideration you can afford us during the planning stages.

Very truly yours,

John R. Simpson
Assistant Director
Protective Operations

Advisory Neighborhood Commission 6A
Maury Elementary School
13th & Constitution Avenue, N.E., Room 10
Washington, D.C. 20002

Phone: 544-3637

February 3, 1988

To: Architect of the Capitol and Staff

Subject: Judiciary Office Building

The members of the Advisory Neighborhood Commission 6A, which was set up under the Home Rule Act to represent the interests of persons residing in the north easterly section of the Capitol Hill Historic District, view with considerable apprehension the plan presented by the office of the Architect of the Capitol to construct a new building adjacent to Union Station which exceeds the height limitations prevailing in the surrounding community.

It was originally stated that this building, designated for use by agencies " in the judicial branch of the United Stated" should provide 400,000 square feet of space. This dimension has now been raised to over 500,00 square feet, an increase in total floor area of over 25%. The rationale for this is stated to be "economic viability" of the project; that is, the income generated by renting office space to non-governmental operations. We do not believe that this justifies the erection of yet another megalithic building in the Historic District.

In addition to our concern about the height and bulk of the proposed building, we are also concerned about its deleterious effect upon existing traffic patterns, both pedestrian and vehicular. Residents of the area are already hardpressed to find parking space, and it is easy to verify that below grade parking facilities do not satisfy the needs of community drivers. Automobiles belonging to Supreme Court and Library of Congress employees already clog residential streets around their respective buildings, and on-street parking in the neighborhood of Union Station is largely preempted by Congressional staff. Access to Union Station, both for vehicles and for pedestrians, is inconvenient and often hazardous, and an overscaled building in close proximity to the station can only exacerbate the problem.

We therefore urge that all possible steps be taken to encourage the use of public transportation, to facilitate car pooling, and to establish disincentives for the use of single occupancy vehicles by tenants of the proposed building.

Respectfully submitted,

M. Higgins

M. Higgins, Vice Chairman, A.N.C. 6A
Chairman of Zoning Committee of A.N.C. 6A

MH:pas

Advisory Neighborhood Commission

6B

921 PENNSYLVANIA AVENUE, S.E. — SUITE 108
WASHINGTON, D.C. 20003 — 543-3344

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EXECUTIVE SECRETARY
Caesar Marshall

February 9, 1988

Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

ATTN: Ms. Nan Stockholm

Dear Sir/Madam:

This is in regard to S. 1934, which would authorize the Architect of the Capitol to contract for the design and construction of an office building to house the administrative offices of the federal judiciary adjacent to Union Station. A hearing was held on this bill on February 3.

I am submitting these comments as a member of Advisory Neighborhood Commission 6B and as a member of the Capitol Hill Traffic Management Task Force. Although Advisory Neighborhood Commission 6B boundaries do not include the site, we represent neighborhoods south of East Capitol Street that would be affected by this and other development in the Union Station area.

My comments are as follows:

1. Section 5 of the bill provides, inter alia, that the building design and particulars will not be subject to review and approval by the Fine Arts Commission and the National Capital Planning Commission. I believe this total exemption is unwise. At the very least, review should be obtained as a matter of policy. I recommend that the Subcommittee on Water Resources, Transportation, and Infrastructure amend Section 5 to require the Architect to submit the selected design to the Fine Arts Commission and NCPC for their review and comment, even though these bodies would not have the legal authority to approve or disapprove the design in a legal sense.

2. I urge the Subcommittee to amend the bill to require specific measures designed to reduce the use of private motor vehicles by individuals using or visiting the new office building. This amendment was proposed in a statement presented to the Subcommittee by the Capitol Hill Restoration Society. Further, the bill should require that the Architect consult the appropriate local authorities, such as the D.C. Department of Public Works, and community organizations in developing effective traffic reduction measures.

3. The Subcommittee should take action to reduce the height of the structure as currently proposed and require that the building conform to the height limitations set by the Building Height Act of 1910. As it now stands, the bill would allow the building to exceed these height limitations, in violation of the Master Plan, and the Comprehensive Plan. In my view, exempting the new building from the historic height limitations is not warranted and would set a damaging precedent.

Thank you for your consideration of these viewsand recommendations.

Sincerely yours,

William van den Toorn
ANC 6B
Single Member District 06

CAPITOL HILL
RESTORATION
SOCIETY INC
P.O. BOX 15264
WASHINGTON, D.C. 20003-0264

TESTIMONY OF
THE CAPITOL HILL RESTORATION SOCIETY INC.,
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND
INFRASTRUCTURE
OF THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON S. 1934

February 3, 1988

Mr. Chairman and Members of the Subcommittee:

My name is Patricia Schauer, and I live at 1107 Independence Avenue, S.E., Washington, D. C. 20003. I am Second Vice President and Chairperson of the Committee on Environment of the Capitol Hill Restoration Society, Inc., a community organization of approximately 1,000 members on Capitol Hill, having primary interests in maintaining Capitol Hill as a model urban community as well as in historic preservation.

On behalf of the Restoration Society, I would like to thank you for this opportunity to submit for the record the Society's position on S. 1934. A Bill, Pursuant to the report ordered by Public Law 99-229, which directed the Architect of the Capitol and the Secretary of Transportation to undertake a study of the needs of the Federal judiciary for additional Federal office space, to authorize the Architect of the Capitol to contract for the design and construction of a building adjacent to Union

Station in the District of Columbia to house offices of the judicial branch of the United States, and for other purposes.

The Capitol Hill Restoration Society offers two amendments to the bill and urges the Subcommittee to adopt these amendments.

The first amendment is concerned with the law known as the "Building Height Act" (the Act of June, 1910, ch. 263, 36 Stat. 452; D. C. Code sections 5-410--5-409, 1981 ed.) That law was enacted to ensure that no building would be erected in the District of Columbia that would approach the height of the Capitol so that the Capitol Dome could be seen unobstructed by any other building. The need to reiterate support of this concept is extremely important when we are considering a building only four blocks from the Capitol Building itself.

Our concern is that the bill, on page 2, line 16, provides that the building will be "constructed substantially in accordance with alternative D" and, on page 8, beginning on line 21, waives all laws of the District of Columbia, including congressional enactments, relating to building codes and permits.

The Building Height Act is far too important in preserving the vista and integrity of the Capitol Building to be ignored. Moreover, any possibility of exceeding the Act on the east side of Union Station could set a dangerous and unacceptable precedent for a second attempt to add height to the Old Post Office

Building on the west side of Union Station. Therefore, the Capitol Hill Restoration Society would propose the following amendment to S. 1934:

On page 8, line 25, immediately before "Any", insert the following new sentence: "However, any such building may not exceed the heights established under the Act of June 1, 1910 (D.C. Code, sections 5-401--5-409)."

The second concern and amendment of the Capitol Hill Restoration Society is with traffic and its impact on the surrounding residential community. This judicial branch office building is only one of many buildings planned for and intended to be constructed over the next several years in the Union Station area. Over the next 5-10 years, millions of square feet of office space will be added to this area. Needless to say, the office space will generate an enormous volume of traffic which will seriously and adversely affect our historic residential community abutting these proposed buildings.

The Society would therefore ask--urge--that every effort be made to see that this judicial branch building be designed, developed, constructed, and used in a way that this adverse traffic impact be minimized. To emphasize the importance of reducing the traffic impact, we ask that S. 1934 be amended as follows:

On page 4, between lines 13 and 14, insert the following:

"(3) In designing, developing, and constructing the building provided for under this section, every effort will be made to reduce the traffic impact on the surrounding residential community resulting from the use of the building. Any lease made under this Act for the use of the building shall include specific measures designed to reduce the use of private motor vehicles by those individuals using or visiting the building, including incentives to discourage such use.

Thank you, Mr. Chairman, for this opportunity. I would be happy to answer any questions.

Senate Public Works Committee hearing Feb. 3, 1988, 406 Diercksen House Office Building, Washington D. C. 20001.

Remarks by Virginia W. Gaddis, Advisory Neighborhood Commission 6A Chairman, Transportation and Environment Committee.

Since this building proposed between E. and F. Streets NE, is adjacent to Union Station, a magnet for travelers on foot, bicycle, bus, and car, it should be necessary that any plans for the building incorporate a traffic plan complementary to that of the Union Station

It appears in drawings that a street will be closed. E Street, is a connection to the neighborhood to the east. In order to accomodate convenient access from that direction for pedestrians and bicyclists it should be hoped that access, at least, will be assured. The city and neighborhood transportation planners should have in-put into any exits and entrances for larger vehicles into 2nd Street NE.

The Capitol Hill Traffic Task Force was given a tour of the area last summer, actually probably 1986, and was assured by the develper of an adjacent property that consideration was going to be given even to light rail inconjunction with his develpment to the immediate rear of this proposed structure.

It would appear that all of these potential modes for the area be included in a comprehensive traffic plan. Bicycle parking for employees and visitors to the building need also be assured in convenient and sheltered areas. METRO and rail transportation is to be assumed at this location,
Thank you.

Virginia W. Gaddis
238 11th Street NE
Washington D. C. 20002

RESIDENTIAL ACTION COALITION
1524 "T" Street NW Washington DC 20009

February 18, 1988

The Subcommittee on Water Resources
Transportation, and Infrastructure.

Committee on Environment
and Public Works
U. S. Senate
Re: Senate Bill 1934

Senator Daniel P. Moynihan, Chairman:

Mr. Chairman, members of the committee, My name is Kathleen A. Eckles, President of the Residential Action Coalition. We are a community-based organization incorporated in the District of Columbia with a Constitution and By-laws. We are committed to the preservation of housing, historic preservation, Zoning, licensing and the enforcement of all the above. Though the property covered by Senate Bill 1934 is outside our geographical boundaries, the serious Federal interest matter is not. This is part of the legacy of each American and knows no physical fences.

We met last evening, February 17, the first since December, 1987.

RESIDENTIAL ACTION COALITION
1524 "T" Street NW Washington DC 20009

After a full exploration and discussion of Senate Bill 1934, we resolved as follows and unanimously:

To request your committee to uphold the 1910 Height Limit (eighty feet on this site) which we feel may be violated in this proposal; and to request the architect of the Capitol to rewrite the specifications for the proposed building in accordance with that statute.

Respectfully submitted,

Frederick A. Eckler,
President
Residential Action Coalition
1524 T St NW
Washington, DC 20009
265-5961

NATIONAL CAPITAL PLANNING COMMISSION

COMMISSION MEMBERS

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Honorable John Glenn

Chairman, Committee on the District of Columbia, U.S. House of Representatives
Honorable Ronald V. Dellums

Mayor, District of Columbia
Honorable Marion S. Barry, Jr.

Chairman, Council of the District of Columbia
Honorable David A. Clarke

EXECUTIVE DIRECTOR
Reginald W. Griffith

IN REPLY REFER TO:
NCPC File No. 2821

March 28, 1988

The Honorable Daniel P. Moynihan
Chairman
Subcommittee on Water Resources,
Transportation and Infrastructure
Committee on Environment and Protection
United States Senate
Washington, D.C. 20510

Dear Senator Moynihan:

The Commission has asked me to advise you of its concerns about the provisions of S. 1934 that appear to permit an exception to the Height of Buildings Act of 1910 at a critical site, which is adjacent to Union Station and forms part of the frame of the U. S. Capitol Grounds. Although the Commission's responsibilities do not extend to buildings and grounds under the care of the Architect of the Capitol, we are concerned about both the precedent and the example for other Government and private projects that would be set by a building exceeding the provisions of the 1910 Act at this location. Also, we believe that a building exceeding the established height limit on the proposed site would have serious impacts on the setting of the Capitol, Union Station, and the entire Union Station Plaza area, including the adjacent Old City Post Office.

The 1910 Act prescribes a height limit of 80 feet for buildings fronting on or abutting Union Station Plaza. This limit allowed Union Station to serve as the dominant centerpiece on the Plaza as architect Daniel H. Burnham had envisioned. The Old City Post Office, also designed by Burnham and the only building other than Union Station currently abutting the Plaza, was built to a height of 80 feet consistent with the Act. As you may know, in November 1987 this Commission rejected plans for an addition to the Old City Post Office which would have risen some 33.5 feet above the ridgeline of its roof. The Commission found the addition unacceptable not only because of its violation of the 1910 Act but also because of its visual impacts on Union Station and the setting of the Capitol.

It was initially and repeatedly maintained that an addition above the 80-foot height limit was vitally needed to make the Post Office project economically feasible. We are pleased that, after further study, the Postal Service and its designated private developer have resubmitted an economically feasible project without a rooftop addition. The Commission has enthusiastically approved this submission. In addition to approximately 340,000 square feet of new office space, the project will involve restoration of the exterior of the building and the Main Lobby to the highest preservation standards. The project will then provide attractive and needed office space which may be used by Federal agencies.

We believe the Old City Post Office project is an excellent example of the feasibility of a joint public-private development within the 80-foot height limit. This renovation and addition proposal differs, of course, from the new construction required for the judiciary building. However, the ability of the Post Office developers to revise their plans to adhere to the height limit suggests that, given the availability of Federal land and an assured long-term lease for the judiciary building, new construction within the height limit should also be feasible. In fact, we understand that at least one of the proposals submitted for the judiciary building conforms to the 80-foot height limit.

In the Commission's view, the question of whether the Capitol Grounds are exempt from the 1910 Act is not the pivotal issue respecting the height of the judiciary building. Ultimately, the Congress can establish whatever conditions it chooses regarding the development of the building. What is most important, we believe, is the substantive issue of adherence to the spirit and intent of height limits established by the Congress so as to serve as a positive model and precedent for future government and private development. These height limits have been most effective in protecting and enhancing the settings of the Capitol and Union Station.

Examples set by the Congress in the buildings under the jurisdiction of the Architect of the Capitol serve as vitally important influences on the rest of the Government and the private sector alike. As you know, there have been many efforts over past years to remove the height limits and, in some cases, to grant special relief from the limits for particular locations in the city. Fortunately these efforts were not successful, and our skyline continues to be dominated by our National monuments rather than the office buildings which now overshadow so many other world capitals. The continued support of the Congress for the established height limits is crucial to preserving this unique national heritage.

For these reasons, we urge that S. 1934 be amended to establish a maximum allowable height of 80 feet for the new judiciary building. We appreciate your consideration of our views and concerns in this matter.

The Office of Management and Budget has advised that there is no objection to submission of this report from the standpoint of the Administration's program.

In closing, on behalf of the Commission, I would like to express our deep appreciation for the leadership and support that you and Senator Cranston provided during the early days of the PortAmerica controversy. Your efforts were significant in creating a working environment through which the regional height issue raised by this project could be resolved. I am pleased to report that the environmental evaluation which is now complete shows that the World Trade Center tower, at the greatly reduced height now proposed, no longer intrudes on the setting of the Monumental Core of our Nation's Capital or presents a threat to air navigation.

Sincerely,

Vice Ch.

Glen T. Urquhart
Chairman

II

100TH CONGRESS
1ST SESSION

S. 1934

Pursuant to the report ordered by Public Law 99-229 which directed the Architect of the Capitol and the Secretary of Transportation to undertake a study of the needs of the Federal judiciary for additional Federal office space, to authorize the Architect of the Capitol to contract for the design and construction of a building adjacent to Union Station in the District of Columbia to House agencies offices in the judicial branch of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 1987

Mr. MOYNIHAN (for himself, Mr. BURDICK, and Mr. STAFFORD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

Pursuant to the report ordered by Public Law 99-229 which directed the Architect of the Capitol and the Secretary of Transportation to undertake a study of the needs of the Federal judiciary for additional Federal office space, to authorize the Architect of the Capitol to contract for the design and construction of a building adjacent to Union Station in the District of Columbia to House agencies offices in the judicial branch of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AGREEMENT TO CONSTRUCT BUILDING

SECTION 1. (a) The Architect of the Capitol, under the direction of the Commission for the Construction of a Judiciary Office Building (established by subsection (c)), is authorized to enter into agreement or agreements with any person or persons for the designing, developing, and construction of a building, on squares 721 and 722 in the District of Columbia, for use by the Administrative Office of the United States Courts, the Federal Judical Center, the Judicial Panel on Multidistrict Litigation, and United States Sentencing Commission, chambers for retired Justices of the Supreme Court, and other related offices of the judicial branch of the United States Government (hereinafter "judicial branch offices"), and nongovernmental tenants. Any such agreement shall require that such building shall be designed, developed, and constructed substantially in accordance with alternative D of the report to Congress entitled "A Study of Alternatives for the Construction of an Office Building(s) for the Administrative Office of the United States Courts", submitted on August 10, 1987. In selecting the party with whom to enter into this agreement, the Architect of the Capitol shall give preference to the five architect/developer teams that participated in the study. The Architect of the Capitol shall secure from the Chief Justice of the United States approval of all final decisions regarding the building's architectural design.

(b)(1) Any agreement entered into by the Architect of the Capitol pursuant to this section shall require—

(A) except to the extent otherwise provided by this Act, all designing, developing, and construction costs incurred in constructing a building pursuant to subsection (a) to be carried out without costs to the United States Government;

(B) title to squares 721 and 722 in the District of Columbia to remain in the United States Government;

(C) title to any building and other improvements constructed or otherwise made on or to squares 721 and 722 in the District of Columbia shall immediately revert to the United States Government at the expiration of not more than thirty years from the effective date of the lease agreement concluded pursuant to section 3 of this Act without payment of any compensation by the United States Government;

(D) as determined by the Architect of the Capitol, any improvements on or to squares 721 and 722 to be designed, developed, and constructed, in substantial accordance with the master plan for the United States Capitol, dated 1981; and

(E) improvements constructed on or to squares 721 and 722 in the District of Columbia to be leased to the United States Government in accordance with

the provisions of this Act and such terms and conditions as shall be prescribed by the Architect of the Capitol in accordance with this Act.

(2) The Architect of the Capitol is authorized, on behalf of the United States Government, to enter into an agreement leasing squares 721 and 722 in the District of Columbia for purposes of this Act. Any such lease shall establish a procedure to calculate the maximum rental rates which may be charged to the judicial branch offices under leases entered into pursuant to section 3 of this Act and shall contain such other terms and conditions as the Architect may prescribe. In no event shall any such lease, including renewals thereof, exceed, in the aggregate, thirty years.

(c)(1) There is established the Commission for the Construction of a Judiciary Office Building (hereinafter referred to in this Act as the "Commisisen").

(2) The Commission is composed of—

(A) the Director of the Administrative Office of the United States Courts;

(B) The chairman of the Senate Committee on Rules and Administration;

(C) The chairman of the Senate Committee on Environment and Public Works;

(D) The chairman of the Committee on Public Works and Transportation of the House of Representatives;

(E) The chairman of the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the Committee on Appropriations of the Senate; and

(F) The chairman of the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the Committee on Appropriations of the House of Representatives.

STRUCTURAL AND MECHANICAL CARE AND SECURITY

SEC. 2. (a) Upon commencement of occupancy by the United States Government, under a lease agreement concluded pursuant to section 3 of this Act, of the improvements made on or to squares 721 and 722 in the District of Columbia pursuant to this Act, the structural and mechanical care and maintenance thereof shall be the responsibility of the Architect of the Capitol in the same manner and to the same extent as the structural and mechanical care and maintenance of the United States Supreme Court Building under the Act of May 7, 1934 (40 U.S.C. 13a).

(b) In order to minimize costs to or for the convenience of the United States Government, the Architect of the Capitol is authorized, under the direction of the Commission, to

delegate or assign all or any part of such care or maintenance through a lease agreement or otherwise.

(c) All other duties and work required for the operation and domestic care of the building, after the Government commences occupancy thereof, shall be performed by the Architect of the Capitol. In order to minimize costs to or for the convenience of the Government, the Architect of the Capitol, under the direction of the Commission, is authorized to assign all or any part of the work of operation and domestic care of the building through any lease or other agreement entered into by the Architect of the Capitol. The provisions of section 4 of the Act of July 31, 1946 (40 U.S.C. 193d), shall not apply to any space in the building leased to a non-Government tenant pursuant to this Act.

(d) The United States Capitol Police shall be responsible for all exterior and interior security of the building: *Provided, however,* That nothing in this Act shall preclude the Architect of the Capitol and the Chief Justice or his designee from making alternative arrangements for interior security and nothing in this Act shall be construed to interfere with the obligation of the Marshal of the Supreme Court of the United States to protect Justices, officers, employees, or other Supreme Court personnel who may occupy the building.

LEASE OF SPACE

SEC. 3. (a) Notwithstanding any other provision of law, the Director of the Administrative Office of the United States

Courts is authorized to negotiate and enter into leases with the owner of the building constructed pursuant to this Act for all space required by the judicial branch offices. The rental rates charged to the judicial branch offices under such leases shall not exceed the limitations specified in the lease entered into between the Architect of the Capitol and the owner of the building under section 1(b)(2) of this Act. The Director may assign and reassign the space leased by him among the judicial branch offices as he may deem necessary.

(b) During the term of any such lease, any part of the general purpose office component of the building not leased to the United States Government may be leased by the owner of such building to nongovernmental tenants at market rates, if all such leases, as determined by the Chief Justice or his designee, are compatible with the dignity and functions of the judicial branch offices and do not unduly interfere with the activities and operations of the judicial branch agencies offices.

(c) The Chief Justice of the United States or his designee shall have the right of first refusal for any unoccupied space in the building. Whenever the Chief Justice of the United States or his designee advises the owner of the building that the judicial branch agencies offices require additional space in the building, the owner shall accommodate those requirements as promptly as possible.

(d) After title to the building vests in the United States, the building occupancy shall be managed and controlled by the Chief Justice of the United States or his designee, who may assign or lease any space not required by the judicial branch offices to other governmental or private entities. Any moneys received as a result of such assignment or lease shall be deposited in the general fund of the Treasury as miscellaneous receipts.

(e) In the event of a vacancy in the Office of Chief Justice of the United States, the most senior Associate Justice shall carry out the duties imposed on the Chief Justice by this Act until such time as that vacancy is filled.

REPEAL

SEC. 4. Section 116(a)(2) of Public Law 97–125, approved December 29, 1981, relating to assignment of certain real property by the Architect of the Capitol is repealed.

BUILDING ON CAPITOL GROUNDS

SEC. 5. Any building constructed on squares 721 and 722 in the District of Columbia shall be categorized as a building within the exterior boundaries of the United States Capitol Grounds and shall not be subject to any law of the District of Columbia (including any such law enacted by the Congress) relating to building codes, permits or inspection, or subject to the review or approval of the Commission on Fine Arts or the National Capital Planning Commission. Any improvements constructed on squares 721 and 722 pursuant to

this Act shall not be subject to any such law of the District of Columbia (including any such law enacted by the Congress) relating to real estate and personal property taxes, special assessments or other taxes, or any other such law of the District of Columbia.

DESIGN, DEVELOPMENT, AND CONSTRUCTION

SEC. 6. The design, development, and construction of the building and improvements authorized by this Act shall be subject to the approval of the Architect. Any person who enters into an agreement with the Architect of the Capitol pursuant to section 1(a) for development of such building shall provide the Architect of the Capitol with funds necessary to defray all costs of contract administration, design review, construction inspection, and related project costs which are needed by the Architect, in addition to the funds transferred to the Architect of the Capitol by section 9 of this Act. Amounts so paid shall be deposited in the Treasury and credited as an addition to the appropriation account established for the Architect of the Capitol for this project and shall be disbursed on the order of the Architect of the Capitol to defray such costs.

AUTHORITY TO CONTRACT AND LEASE

SEC. 7. The Architect of the Capitol is authorized, subject to the availability of funds, to enter into contracts, leases, incur obligations, and make such expenditures, including expenditures for personal and other services, as may be

necessary for the purpose of carrying out the provisions of this Act.

CAPITOL POWER PLANT

SEC. 8. The Architect is authorized to furnish chilled water and steam from the Capitol Power Plant to the building through extensions of chilled water and steam lines constructed by the Union Station Redevelopment Corporation to serve the Union Station Complex. Any agreement with the Architect of the Capitol pursuant to section 1(a) for development of the building shall provide that the owner of the building shall bear all costs associated with the installation of chilled water and steam lines to the building and shall undertake to reimburse the Union Station Redevelopment Corporation for an equitable share of the cost incurred by the Union Station Redevelopment Corporation in constructing extensions of the chilled water and steam lines to serve the Union Station Complex, and reimburse the United States Government for the costs of providing chilled water and steam.

UNEXPENDED BALANCE OF FUNDS

SEC. 9. The unexpended balance of funds heretofore appropriated by the Act of July 1, 1986 (Public Law 99–349; 100 Stat. 717), under the heading "Study of Construction of Office Building" are transferred to the Architect of the Capitol immediately upon the date of the enactment of this Act. Such unexpended balance shall be available for design

review, construction inspection, contract administration, and such other project related costs as the Architect of the Capitol may deem appropriate.